



Australian Government

Defence Honours and Awards Appeals Tribunal

Browne and the Department of Defence re: Bell DHAAT 12 (3 October 2019)

File Number 2018/019

Re **Mr Neville Browne**
Applicant

And **Department of Defence**
Respondent

Tribunal Mr Mark Sullivan AO (Presiding Member)
Mr David Ashley AM
Ms Jane Schwager AO

Hearing Dates 8 July 2019

DECISION

On 3 October 2019 the Tribunal decided to recommend to the Minister that the decision of the Chief of Army, Lieutenant General David Morrison AO of 5 May 2015, that no further action be taken to recognise Private Alec Bell regarding his actions as a platoon medic with the 7th Battalion, the Royal Australian Regiment during the Vietnam War, be affirmed.

CATCHWORDS

DEFENCE HONOUR – *Medal for Gallantry – Vietnam - service as a medic –adequacy of training – available evidence*

LEGISLATION

Defence Act 1903 – Part VIIC – Sections 110T, 110VB (1)
Defence Regulation 2016, Section 35.

Commonwealth of Australia Gazette No S25 Letters Patent and Regulations for the Australian Gallantry Decorations - dated 4 February 1991.

REASONS FOR DECISION

Introduction

1. On 28 June 2011, Mr Neville Browne lodged a submission to the Defence Honours and Awards Appeals Tribunal (the Tribunal) *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour*, (the Valour Inquiry).¹ In his submission, Mr Browne sought recognition, by way of a ‘posthumous bravery award’ for Private Alec Bell, who died of wounds while serving with the 7th Battalion, the Royal Australian Regiment (7 RAR) in Vietnam on 29 January 1968. Mr Browne provided a further submission dated 11 April 2013, and further material dated 27 March 2015.

2. Following the Valour Inquiry, Mr Browne’s submissions were provided to the Chief of Army for consideration. A ‘desk-top’ review was then conducted by Army with the purpose of a recommendation or a course of action. The Chief of Army wrote to Mr Browne on 5 May 2015, stating:

*‘Army could not locate any evidence that Private Bell’s actions were not appropriately considered, or that any recommendation was obstructed or unfairly treated in any way. Therefore in the absence of a failure in due process or new authoritative and compelling evidence, Army recommended to the Parliamentary Secretary (for Defence) that no further action be taken to recognise Private Bell. The Parliamentary Secretary has agreed to this recommendation.’*²

3. On 10 March 2018, Mr Browne applied to the Tribunal for a review of this decision, seeking that Private Bell be posthumously awarded the Medal for Gallantry (MG).³

4. Mr Browne stated in his application for review to the Tribunal that he has based his application ‘on a number of matters’. These matters were:

‘New evidence reveals acts of gallantry by Alec Bell on several occasions’;

‘An act of malfeasance by the Commander 7 RAR in Unit Routine Orders number 239 April 1967 which precluded accurate records being maintained’;
and

*‘For reasons unknown the number of awards for gallantry to National Servicemen who served in Vietnam is very small for the number of men who served. Plus there are items on statistics that may be of interest to the Tribunal’.*⁴

5. In accordance with the Tribunal’s Procedural Rules, on 29 March 2018, the Chair of the Tribunal, wrote to the Secretary of the Department of Defence seeking a report which

¹ Valour Inquiry Submission No. 88, Mr Neville Browne, 28 June 2011.

² Letter, OCA/OUT/2015/R21045046, Chief of Army to Mr Browne dated 5 May 2015.

³ Application for Review of Decision, Mr Browne to the Tribunal, 10 March 2018.

⁴ Letter, Mr Neville Browne to the Tribunal, 10 March 2018.

refers to the evidence under the Department's control that is relevant to the application for review.⁵

6. On 28 June 2018, Defence provided a copy of its report to the Tribunal.⁶ In its report Defence advised that a merits review of this matter would be undertaken by the Defence Historical Honours Review Board (HHRB).⁷

7. On 29 June 2018, the Tribunal provided a copy of the Defence Report to Mr Browne and offered him the opportunity for comment.⁸

8. On 21 August 2018, Mr Browne responded to the Defence Report providing his comments.⁹

9. After meeting on 31 August 2018 the HHRB, in relation to this matter:

'agreed that although Private Bell's actions could be considered courageous, he was doing his job as was expected of a medic at that time. His actions were highly professional, but not of such merit as to deserve retrospective recognition. The HHRB formed the view that the original decision by the then Chief of Army in 2015 to not support retrospectively awarding Private Bell with a Medal for Gallantry, or other honours recognition, should stand'.

10. The Directorate of Honours and Awards of the Department of Defence wrote to Mr Browne on 2 November 2018 advising him of the HHRB's conclusion.

Tribunal Jurisdiction

11. Pursuant to Section 110VB(1) 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 Section 110V(1) and includes a decision made by a person within the Department of Defence or the Defence Force, to refuse to recommend a person for a defence honour, in response to an application.

12. Section 35 of the *Defence Regulation 2016* lists the defence honours reviewable within the Tribunal's jurisdiction. Included in the defence honours listed in Section 35 is the MG. The Tribunal considered that the Chief of Army's decision of 5 May 2015 to not recommend Private Bell for the MG in response to Mr Browne's application constitutes a reviewable decision. Therefore, the Tribunal has jurisdiction to review this matter.

13. The role of the Tribunal is to determine the correct or preferable decision in relation to the application having regard to the applicable law and the relevant facts. In accordance with Section 110VB(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

⁵ Letter, DHAAT OUT/2018/126 to the Secretary, dated 29 March 2018.

⁶ Letter, DGPERS-A/OUT/2018/R34875700 Director General Personnel-Army to the Tribunal, 28 June 2018.

⁷ Ibid.

⁸ Letter, DHAAT/OUT/2018/444, to Mr Browne, 29 June 2018.

⁹ Letter, Mr Browne to the Tribunal, 21 August 2018.

make recommendations regarding the decision to the Minister. Under Section 110VB of the Defence Act, the Tribunal must conduct a merits review of a reviewable decision where an application for review has been properly made.

Private Bell's service

14. On 13 July 1966, Alec Ernest James Bell, a 20 year old postal worker from East Victoria Park in Western Australia, was enlisted for two years of national service with the Regular Army Supplement (RAS (NS)).

15. As part of the Third National Service intake he was posted to Alpha Company, 2nd Recruit Training Battalion, at Puckapunyal in Victoria to undertake recruit training. Upon graduation in September 1966, Private Bell was posted to the Infantry Corps Wing of the 3rd Training Battalion at Singleton in NSW where he undertook advanced infantry training.

16. According to his service record, Private Bell was transferred back to Puckapunyal in December 1966 as a rifleman to join the newly-raised 7 RAR. The battalion had just completed the 6th Australian Task Force led Exercise Barra Winga, a final shake-down exercise in preparation for deployment to Vietnam. This one-week intensive battle preparation exercise was held at the Shoalwater Bay training area in Queensland. The purpose of the exercise was to test the Battalion and supporting units in tactics employed by the Viet Cong. Private Bell did not take part in this training and it would appear he did not receive any other battle preparation training.¹⁰

17. Although posted to the battalion as a rifleman, Private Bell was also required to perform the duties of platoon medic. In order to do this work he undertook stretcher bearer/medic training which involved subjects on health and basic first aid.

18. On 8 April 1967, Private Bell embarked for Vietnam in HMAS *Sydney*, disembarking at Vung Tau twelve days later.

19. Private Bell was the platoon medic of 2 Platoon, A Company, 7 RAR. On 29 January 1968, after serving in Vietnam in a number of operations, he was mortally wounded in action during Operation COBURG. Mr Browne's first submission to the Valour Inquiry was concerned with Private Bell's service in this operation. The evidence provided by Mr Browne regarding Private Bell was a quote from the book *Conscripts and Regulars, with the Seventh Battalion in Vietnam*,¹¹ which stated, 'When Sergeant (Thomas) Bourke was asked to describe the bravest act he saw in Vietnam he wrote:

'Private Dinga Bell was platoon medic on the late afternoon of 29th January 1968. In the first few moments the Platoon Commander 2LT O'Brien, and all the NCO's were wounded including Private Bell who had received a direct hit from a rocket. Even though shockingly wounded Private Bell tried to get to the other wounded. When he could not move he gave orders to another soldier as to how to help them. Even when we finally got him onto the Dustoff stretcher Private Bell was still giving advice as to the care of the other

¹⁰ Army Research Report into Request for Review of Category 3 Public Submission 088 – 5714453 Alec Ernest James Bell, R34781467, 27 June 2018.

¹¹ Michael O'Brien, *Conscripts and Regulars, with the Seventh Battalion in Vietnam*, Allen and Unwin, St Leonards, 1995.

wounded. As he was lifted off through the trees the enemy opened fire again. The Dustoff was forced to leave the area with Private Bell and stretcher hanging underneath. We later learned that he was dead on arrival at hospital. I later confirmed with then Corporal Clutterbuck, himself wounded, as to what Private Bell had been saying.¹²

20. In a later submission to the Tribunal, Mr Browne put forward the view that Sergeant Bourke's personal experience of being severely wounded in a later engagement gave him particular insight into how much courage it would have taken Private Bell to direct others on how to treat the wounded.¹³

21. In his application for review, Mr Browne included a record of 2012 telephone conversation with Mr Bourke where he confirmed the detail in *Conscripts and Regulars*, and went on to state that after he had been wounded, Private Bell '*kept nudging him and telling him and (Corporal) Clutterbuck how to treat the wounded*'. The record also stated that Private Bell had also shown courage on two other occasions when the platoon had come under fire, and that he '*organised the treatment and tended to the wounded regardless of the danger*'.¹⁴

Private Bell's recognition for service

22. According to the Defence report, Private Bell was eligible for the following campaign medals:

- The Vietnam Medal, and
- The Republic of Vietnam Campaign Medal¹⁵

The actions under consideration

23. Along with his service during Operation COBURG, Mr Browne's later submissions discussed a further two events where Private Bell carried out the duties of a platoon medic. The first event was on 6 August 1967, during Operation BALLARAT, the second on 10 November 1967, during Operation SANTA FE.

6 August 1967, Operation BALLARAT

24. Operation BALLARAT, was planned as a battalion sized search and destroy operation, between 4 and 16 August in an area of operations north west of the Australian Task Force base at Nui Dat. The operation involved 7 RAR and supporting units. The engagement between 7 RAR and the enemy on 6 August 1967 is known as the Battle of Suoi Chau Pha. Six Australians were killed during this operation, and a further 20 were wounded.¹⁶

¹² O'Brien, *Conscripts and Regulars*, p113.

¹³ Valour submission 88A, Mr Neville Browne.

¹⁴ Application for Review, Mr Neville Browne, 10 March 2018.

¹⁵ The Tribunal also notes that Private Bell would now be eligible for other campaign and service awards created since his death in Vietnam.

¹⁶ Ian McNeill and Ashley Ekins, *On the Offensive, the Australian Army in the Vietnam War, 1967-68*, Allen and Unwin, Crows Nest, 2003.

25. In a submission to the Tribunal, Mr Browne stated that during the Battle of Suoi Chau Pha, Private Bell treated Sergeant Alexander Sutherland, who was seriously injured with the loss of an eye and a leg. Mr Browne stated, relying on evidence provided by Mr Bourke, that it was only the very good first aid administered by Bell that allowed Sutherland to survive the journey via the Dustoff evacuation helicopter to hospital. Mr Browne went on to state that *'in the absence of anything that proves the contrary, again, it is safe to state that Alec attended to many of the dead and many of the wounded'*.¹⁷

10 November 1967 during Operation SANTA FE:

26. Operation SANTA FE, planned for 27 October to 16 November 1967, was a taskforce sized search and destroy operation, involving the 1st Australian Task Force, together with American and South Vietnamese units. 7 RAR's part in this operation included the securing of two fire support bases and searching the allotted area of operations for the enemy.¹⁸

27. As discussed in the Defence report, a 2 Platoon Contact Report for Operation SANTA FE describes how on 10 November 1967 a DH10 Chinese claymore mine was fired into the A Company patrol base. The blast killed two soldiers and wounded six others, including the platoon commander, Lieutenant Ian Gay (now known as Mr Ian Garthwaite).

28. In his comments on the contact report, the Company Commander, Major Ewart O'Donnell, noted:

'Some confusion was noticed for two minutes after the explosion. The fol points were noted:

Soldiers trying to help the wounded exposed themselves unnecessarily before the perimeter had been cleared. The possibility of a second claymore or an assault were overlooked.

Too much unnecessary shouting.

DUSTOFF was efficient and quick despite the fact the company medic (Lance Corporal Dando) was among the seriously wounded'.

29. Although the contact report does not mention Private Bell by name, Mr Browne suggests that this is an illustration of his actions for which Private Bell should be recognised.

30. Mr Browne's application includes a statement provided by Mr Garthwaite on the occasion of the naming of the Alec Bell Park, East Victoria Park. Mr Garthwaite discusses Private Bell's service in Vietnam, and how he and others were treated by Private Bell after being wounded in Operation SANTA FE. A similar statement from Mr Garthwaite can be found in a 7 RAR Association newsletter dated April 2015.¹⁹ The book *Conscripts and Regulars* gives another statement from Mr Garthwaite, which is consistent with his other statements:

¹⁷ Letter, Browne to the Tribunal, 15 July 2019, Annex A, p.5.

¹⁸ O'Brien, *Conscripts and Regulars*, p.75.

¹⁹ *Seven News*, 7th Battalion RAR Association QLD Newsletter, Issue 1, 2015.

I remember a clear sequence. First, I felt a pain in my right thigh, then I was blown off my feet and then I heard the noise of an explosion. There was immediately a lot of yelling and screaming. I looked at my greens which were wet and dark from the rain and saw a darker patch spreading on my right thigh. I slipped my pants down and saw a one centimetre thick surge of blood which was pumping out about 30 centimetres from my leg. My first reaction was to shove my thumb into the wound in my leg for a while, I don't know how long, probably only a minute or two, in a state of shock.

*The medic (Bell) came along and said something like "Are you all right Skip?" I said "No, I've been hit in the leg" or something like that and showed him the wound. He said, very cheerfully, "Oh we'll soon fix that!" which I found very comforting as I still wasn't too sure that I was going to be all right. With that he put a tight field dressing over the wound, put a second one over it to be sure and went off to help the other wounded.*²⁰

29 January 1968 during Operation COBURG:

31. Operation COBURG involved the 1st Australian Task Force being deployed out of Phuoc Tuy province, in the border area between Bien Hoa and Long Khanh provinces, to counter an expected Viet Cong and North Vietnamese Army threat to US air bases during Tet, the Vietnamese festival for the lunar new year. The aim of the operation was to deny the enemy access to these areas and to sites from which they could rocket the bases. 7 RAR took part in this operation from 24 January to 13 February.²¹

32. The A Company Operation Analysis Report for Operation COBURG, written by Major O'Donnell, discusses the sequence of events leading up to Private Bell's death on 29 January 1968.

*'29 Jan 68 – Ambushes were maintained during the day. At 1615 hrs a party of VC estimated at 20-30 men were caught in 2 Pl's ambush. The VC replied aggressively with RPG 2 and RPG 7 fire from the flanks...Friendly cas were 1 KIA and 8 WIA, VC cas 4 KIA (Body Count) and 4 KIA (Possible). The remainder of A Coy joined 2 Pl at last light.*²²

33. The 2 Platoon Contact Report, written by 2nd Lieutenant Brendan O'Brien,²³ describes the 1615 action as follows:

'2 Pl were continuing to maintain the ambush where they killed 1 VC the previous day. At 1615 the platoon heard VC approaching and opened fire when the first 5 VC were in the killing ground. The VC, who were already deployed across the whole of 2 Pl's front, replied aggressively with AK47, RPD²⁴ and RPG fire. The initial fire fight lasted approx. 7 minutes during which time 2 Pl took a number of casualties from RPG 2 and RPG 7 fire. The

²⁰ O'Brien, *Conscripts and Regulars*, p81.

²¹ O'Brien, *Conscripts and Regulars*, p.103.

²² Sequence of Events, Operation Analysis Report, Operation COBURG, 28 February 1968, Appendix One to Annex B to 7 RAR SVN 2/68, AWM95: 1/4/78.

²³ 2nd Lieutenant O'Brien passed away in May 1969 following a motor vehicle accident.

²⁴ *Ruchnoy Pulemyot Degtyaryova* machine gun.

pl radio operator was badly wounded and unable to operate the set, and the pl medic (Private Bell) was seriously wounded and subsequently died. The pl comd, although wounded himself, called in gunships, airstrikes, mortars and artillery which he personally directed with the invaluable assistance of the Bn 2IC who was airborne in a Possum.²⁵ The VC continued to engage 2 Pl with small arms and M79 fire probably to cover his own casualty evacuation. The first DUSTOFF aircraft was hotly engaged by the VC and took a number of hits. However by dark 3 litter and 3 winch casualties were extracted, and a further 3 lightly wounded were extracted the fol morning. The VC fire gradually ceased as he withdrew still under heavy fire from 2 Pl, gunships and mortars...²⁶

34. 2nd Lieutenant O'Brien went on to say:

'Most Cas (casualties) were caused by en (enemy) RPG fire. Although 2 Pl had shellscrapes, soldiers exposed themselves to get better visibility.

35. In the book *Conscripts and Regulars*, Mr Bourke recalled:

When the contact was started I was unable to hear because of rocket explosions. Only six personnel left able to defend. The Dustoff was driven off three times by enemy rocket and small arms fire. The platoon commander, although wounded, had to man the radio set as I could not hear.²⁷

36. According to the Task Force (Forward) Ops Log, at 1615hrs the platoon called for helicopter evacuation for four wounded soldiers.²⁸ At 1643hrs the Ops Log records an urgent Dustoff report stating there were five casualties – three sitting and two requiring a litter. The report also stated that a winch would be required and that the site was not yet secure. At 1827hrs Task Force (Forward) reported that it had two medical evacuation helicopters standing by ready to be scrambled as soon as the situation was clarified.²⁹ Three minutes later, the Task Force Headquarters requested that the helicopters be released³⁰ and within five minutes (by 1835hrs) they were airborne. One helicopter headed straight to A Company's location to pick up the Regimental Medical Officer (RMO), while the other circled in the vicinity of 2 Platoon receiving enemy fire while awaiting clearance to begin the evacuations.

37. At 1845hrs A Company reported that the RMO was now on the ground and the wounded were being evacuated,³¹ however as the first casualties were being winched out the helicopter continued to come under heavy fire. Even though the aircraft continued to be the target of enemy fire, further attempts to evacuate the wounded were more successful, as three litter and three winch casualties were lifted off before last light.³²

²⁵ RAAF Sioux helicopter belonging to No 161 Reconnaissance Flight, with the call-sign 'Possum'.

²⁶ *Contact Report, 2 Pl A Coy, 28 February 1968*, Appendix Two to Annex B to 7 RAR SVN 2/68, AWM95: 1/4/78.

²⁷ O'Brien, *Conscripts and Regulars*, p.112.

²⁸ 1ATF (Fwd) Ops Log 29 Jan 68. AWM95: 1/4/77, p252.

²⁹ *Ibid*, p.255.

³⁰ *Ibid*, p.162.

³¹ 7 RAR Log Sheet entry, *Ibid*, p.116.

³² O'Brien, *Conscripts and Regulars*, p.112.

38. In his comments on 2nd Lieutenant O'Brien's report, Major O'Donnell stated:

'A high standard of personal courage was displayed by the soldiers of 2 Pl during this difficult engagement. The Pl Cmd killed one VC and then wounded, commanded his platoon effectively throughout the engagement, directed the artillery and the gunships, supervised Dust Off, and took over the radio after the operator had been seriously wounded.'

The Bn 2IC in a Possum aircraft was of considerable help to 2 Pl especially in helping the gunships to distinguish between 2 Pl and the VC, and in controlling Dust Off.

*The ambush of the VC force by 2 Pl probably saved a friendly installation from attack during the period of Tet. The VC were all carrying large quantities of explosive as well as RPGs.'*³³

39. The Dustoff aircraft played a critical role in evacuating casualties during the operation. In his report, Lieutenant Colonel Eric H Smith, Commanding Officer 7RAR, stated:

*'Mention should be made of the excellent work done by DUST OFF aircraft which took grave risks to evacuate casualties, often under enemy small arms fire and once under enemy RPG and M79 fire.'*³⁴

40. On 10 February 1968 the Company was relieved by A Company 3 RAR and moved to FSB HARRISON.

Witness Statements to the Tribunal

Mr Tom Bourke

41. On 11 June 2019, The Tribunal met with Mr Tom Bourke, an eye witness to the above action, at his home in Melbourne.

42. Mr Bourke described the lead up to the engagement, what they were doing at the time (an orders group), the impact of rockets; and the wounds inflicted. He particularly described the wounds of Corporal Clutterbuck, describing his wounds as *'a mess, twice in the chest he copped it and the blood was still pouring out of him'*.

43. Mr Bourke described Private Bell as being *'wounded to hell but still telling us instructions to stop the bleeding'*. Mr Bourke described how Private Bell told them to use a stick to tighten the bandages over Corporal Clutterbuck's wounds.

44. Mr Bourke then described how another rocket wounded the Platoon Commander after he had made the decision to call for a helicopter to do a casualty evacuation.

45. Mr Bourke stated to the Tribunal that when the casualty evacuation commenced, Private Bell, despite his wounds, refused to be evacuated, including kicking to prevent his

³³ Ibid.

³⁴ Combat Operations After Action Report, Operation COBURG, SVN2/68 dated 28 Feb 68, AWM95 1/4/78.

evacuation and instead staying in the battle to assist the wounded. Mr Bourke stated that Private Bell saved at least three lives and *'paid with his own'*. He stated that Private Bell saved the lives of 2nd Lieutenant O'Brien, Corporal Clutterbuck, and another soldier.

46. He then described the helicopter being fired at, hovering above the trees, and lowering *'the cage'* and in regard to Private Bell *'all awhile refusing to be evacuated'*. He described how the process *'took hours'*.

47. Mr Bourke remarked that if he (Private Bell) had *'got into the chopper first, but he wouldn't let us – he would be alive now'*. He added, *'he was more interested in the wounded, he knew what he was doing, we didn't'*.

48. The Tribunal asked Mr Bourke about the arrival of the Regimental Medical Officer (RMO) and what part he played. Mr Bourke replied that when the RMO arrived *'there was only a couple left and they weren't real bad'*, in reference to the wounded. Later in the conversation, Mr Bourke stated that Private Bell had already been evacuated by the time the RMO had arrived.

49. Mr Bourke described Private Bell as *'the best medic he had ever come across'* and also talked about his performance over a period of time and his engagement with the local population. He also talked about Private Bell during Operation SANTA FE where the enemy had *'fired a Claymore'* into our troops and how Private Bell had *'run to the front'* in response.

50. The Tribunal confirmed that the then Sergeant Bourke, the Platoon Sergeant was responsible for the battlefield clearance of wounded during and after a contact, and that he would therefore know the difference between the expectations of a trained medic, and a stretcher bearer.

51. The Tribunal confirmed with Mr Bourke that he was deafened by the explosion that wounded both him and Private Bell and that Corporal Clutterbuck had later informed him of the specifics of what Private Bell was saying.

52. The Tribunal also asked Mr Bourke if he thought Private Bell knew he was dying, to which he replied that he didn't know.

53. The Tribunal asked Mr Bourke what differentiated Private Bell from other stretcher bearers. Mr Bourke replied that *'by rights we should have got him out first, but he refused.'* He also stated in response to a Tribunal question that if Private Bell had been evacuated first he would still be alive.

54. The Tribunal found Mr Bourke to be a lucid, honest and reliable witness. The Tribunal also noted that Mr Bourke was operationally experienced given his service not just in Vietnam, but earlier in Malaya and Borneo.

Hearing in Canberra on 8 July 2019

Mr Allen Clutterbuck

55. Mr Allen Clutterbuck, then a corporal, was wounded in the same engagement in which Private Bell was killed, and was mentioned in Mr Browne's submissions together with Mr Bourke's evidence in the Tribunal's interview with him in Melbourne. Mr Clutterbuck gave evidence to the Tribunal by telephone.

56. At the commencement of Mr Clutterbuck's evidence, he made clear that he did not wish to discuss the death of Private Bell in detail. He did, however, go on to provide some detail in his oral evidence.

57. Mr Clutterbuck provided evidence which verified Private Bell's professionalism and commitment to improving his competencies as a platoon medic. Mr Clutterbuck also discussed Private Bell's compassion in his treatment of wounded enemy. He stated that it was an honour to serve with Private Bell, and that he had great respect for him.

58. Mr Clutterbuck then went to describe how Private Bell had been hit by an RPG, saying that *'He started screaming, he was in such pain, and it started dying down as he passed away'*.

59. The Tribunal then asked Mr Clutterbuck to verify whether after he was wounded, he continued to give instructions as to how to treat the other wounded. Mr Clutterbuck was unable to verify that this had in fact taken place. Mr Clutterbuck stated that he was himself wounded, and that his main concern was for his section, fearing further assault as the RPG fire continued to strike the platoon's position.

60. On questioning, Mr Clutterbuck could also not verify whether Private Bell had refused the chance to be evacuated. Mr Clutterbuck recalled the confusion of the contact, and that 50 years had since passed since the events under consideration.

61. In its research, the Tribunal was able to source a casualty report³⁵ which, on 30 January 1968, the day after the engagement, listed Mr Clutterbuck's condition as 'satisfactory' and commented 'no penetration' regarding his wounds. Having made this observation, the Tribunal nonetheless acknowledges that Mr Clutterbuck was wounded.

62. As a result of Mr Clutterbuck's comments, the Tribunal proceeded to put some further questions to Mr Bourke, however later decided to not pursue Mr Bourke's answers to those questions.

Summary of the Applicant's claims

63. Mr Browne stated that he believed that Private Bell was entitled to recognition for his actions in Vietnam. He stated that it had only been in recent times that he was aware of Private Bell's bravery. He spoke about Private Bell's bravery on several occasions and referenced back to conversations and communication he had had with Mr Bourke.

³⁵ 7RAR Noticas Reports Jan and Feb 1968, AWM290 7/1/1/2.

64. He made the point that Private Bell wasn't trained (as a medic) and there was no record of him being trained as a medic.

65. Mr Browne took the Tribunal through his understanding of the above actions, and Private Bell's actions as a stretcher bearer. Among other things, he reiterated his view that Private Bell had saved the life of Sergeant Sutherland during Operation BALLARAT, and that of Lieutenant Gay during Operation SANTA FE. Mr Browne reaffirmed his view, based on Mr Bourke's statements, that Private Bell *'was there for two hours on the ground, ignored instructions to get onto a chopper to get taken out, he insisted on staying to give advice to those who were capable to save other lives'*.

66. Mr Browne did also state that he could not guarantee that his understanding of these events were accurate, as he was not an eyewitness. Mr Browne balanced this by stating that from all accounts he had come across, he thought that Private Bell was a brave man and should be recognised.

67. The Tribunal asked the Mr Browne for his understanding of the distinction between being brave, doing a job well and being gallant, and how Private Bell's actions met the criteria for the MG. After some discussion Mr Browne put forward the view that Private Bell's training was not of an adequate standard compared with his expected duties as a platoon medic in a series of different engagements, and also put forward the view that in order for Private Bell to have treated his fellow soldiers in action as he did, he would have had to expose himself to enemy fire, and in doing so, was brave.

The Defence Position

68. Defence were represented by Brigadier Mark Holmes, AM MVO, Major Phil Rutherford (Retd) and Ms Petrina Cole. Defence read from a prepared statement.

69. Defence spoke to the conduct of their process regarding the review of Private Bell's actions. Defence also advised that on 31 August 2018, this matter was considered by the HHRB. This board advised the Chief of Army of its consideration that, *'in the absence of maladministration, or compelling new evidence, that is, evidence that was different to repeated versions of the same evidence, no further action would be taken to recognise Private Bell'*. Defence also stated in the view of its board that, *'although (Private Bell's) actions could be considered courageous, he was doing his job as could be expected of a stretcher-bearer also acting in the role of a medic at the time. His actions were highly professional, enthusiastic and thorough within the limits of his knowledge and training but not considered of such significance as to deserve retrospective recognition'*.

70. Defence stated that its position is that the review of historic honours recognition should only proceed where there is clear evidence of maladministration in the recognition of processing of an award or compelling new evidence that was not available to the commanders of the day. Defence went on to state this was because they believe that lawful and administratively correct decisions made by the chain of command of the day should be upheld.

71. Defence also made reference to the contact report for the engagement on 29 January 1968, which *'observed the details of the action and lessons for improvement before the next fight. These reports do not recommend awards or specific recognition of anyone. It*

would be expected however, that the Platoon Sergeant would have been involved in discussions with his platoon commander, incumbent and new, and the Company chain of command about who's individual actions in battle might be worthy of recognition'.

72. Defence concluded by stating that the Chief of Army's 2015 decision to not support the retrospective honours recognition for Private Bell should stand.

Tribunal Consideration

73. **General.** The Tribunal is required to review decisions 'on the merits' and this requires an examination of the merits of the matter in dispute rather than the lawfulness of the decision under review.³⁶ The merits review necessitates consideration of the evidence and accordingly, the Tribunal conducts an independent review, and considers afresh the relevant facts, law and policy.³⁷ 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.³⁸ The Tribunal is bound to make what it regards as the 'correct or preferable' decision.

Gallantry Assessment

74. **Contemporary Gallantry Awards.** Australian service personnel received honours and awards 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.³⁹ The eligibility criteria for gallantry awards in the Australian system are governed by regulations made under Letters Patent. Each of these awards is made by Instrument signed by the Governor-General, on the recommendation of the Minister.

75. **Gallantry Decorations.** 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*⁴⁰

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

Conditions for the award of the decorations

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

³⁶ Council of Australian Tribunals Practice Manual Dated 7 April 2006 Page 1.3.1.2.

³⁷ Pearson, Linda, 'Merits Review Tribunals', in Creyke, Robin and McMillan, John, *Administrative Law-the Essentials*, AIAL 2002, P68.

³⁸ *McDonald v Director-General of Social Security* (1984) 1 FCR 354

³⁹ Prime Minister of Australia Media Release 111/92 dated 5 October 1992

⁴⁰ *Commonwealth of Australia Gazette No.S25 – Gallantry Decorations Regulations – dated 4 February 1991*

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

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

77. **What is Gallantry?** The Tribunal noted that all the gallantry decorations accord recognition for individuals ‘who perform acts of gallantry in action’. Whilst ‘in action’ is a relatively straight forward concept, ‘gallantry’ is an abstract term, which is not defined in the Regulations. Various dictionary definitions such as ‘dashing courage; heroic bravery’;⁴¹ and ‘courageous behaviour, especially in battle’;⁴² are largely circuitous and unhelpful. Some countries have attempted to differentiate between ‘bravery’ and ‘gallantry’; defining the later as recognition of military personnel who carry out acts which put their lives at risk while involved in operational service; whilst ‘bravery’ is defined as saving or attempting to save the life of another person in the course of which they place their own life at risk.⁴³ Again this is largely unhelpful in defining gallantry in the context of the Australian Honours and Awards system.

78. The Tribunal considered that there is an expectation that all soldiers in battle conducting themselves in accordance with their training, will be acting bravely. The Tribunal considered that gallantry requires a higher standard of conduct than bravery and usually a special and additional element of courage, fearlessness, daring or heroism will have been demonstrated. What amounts to an ‘act of gallantry’, necessarily varies according to the individual circumstances of each action, and depending on many factors, including the level of threat, the person’s training, role and responsibility, the risk to the individual and/or the group, and the consequences of undertaking, or not undertaking, the particular act.

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

Was Private Bell gallant?

80. The Tribunal carefully considered all of the evidence before it, and whether this evidence was sufficient to demonstrate that Private Bell met the criteria for consideration for the award of a gallantry decoration, and if so the level of that gallantry decoration.

81. The Tribunal was concerned that the actions of Private Bell were not included in the contact report⁴⁴ for the engagement which led to his death on 29 January 1968. The Company Commander in his comments generalised that ‘*a high standard of personal courage was displayed by the soldiers of 2 PL during this difficult engagement*’, but no specific mention was made of Private Bell. The Tribunal, while noting that the platoon sergeant and a witness to this review, Sergeant Bourke was also wounded in the engagement, concluded that there was likely an opportunity afterwards to consider

⁴¹ The Macquarie Dictionary on-line accessed 20 October 2018.

⁴² The Oxford Dictionary on-line accessed 20 October 2018.

⁴³ <http://medals.nzdf.mil.nz/category/d/index.html>.

⁴⁴ 7 RAR SVN/2/68 dated 28 February 1968.

recognition for Private Bell. The Tribunal notes that this did not occur within the chain of command.

82. The Tribunal was particularly concerned with the inconsistencies in the evidence given by the two available eye-witnesses to the events of 29 January 1968, Mr Bourke and Mr Clutterbuck. During the interview with Mr Bourke, he confirmed that he was deafened by the explosion that wounded both him and Private Bell and that Corporal Clutterbuck had later informed him of the specifics of what Private Bell was saying. However, Mr Clutterbuck could tell the Tribunal very little regarding Private Bell's actions on 29 January 2019. Mr Clutterbuck told the Tribunal that, understandably, his primary concern laid in the safety of his section as the platoon position continued to weather RPG fire.

83. Furthermore, on the evidence available, the Tribunal could not establish for how long Private Bell might have foregone his opportunity to be properly treated for his own injuries, due to his refusal to be evacuated. Again, the evidence is scanty and somewhat conflicting, however the operations logs show that the airborne evacuation did not commence until over two hours after 2 Platoon took its first casualties at 1615, and was then further delayed further by enemy fire once the helicopters had arrived. From then on however, the casualties evacuated on the 29th appear to have been airlifted in a relatively short space of time (by nightfall).

84. Of less weight, but still a concern for the Tribunal, were the inconsistencies with the description of the then Corporal Clutterbuck's wounds. Mr Bourke described the wounds as very severe, stating, *'a mess, twice in the chest he copped it and the blood was still pouring out of him'*. Mr Clutterbuck though, in his evidence, inferred that he continued to exercise his duties, and his capacity to do so appears to be supported by the casualty report.

85. The Tribunal accepts that there could be various reasons for these inconsistencies and does not infer a lack of good faith in the evidence provided by either Mr Bourke or Mr Clutterbuck.

86. The Tribunal was unable to reconcile the inconsistent evidence of the two available eye-witnesses to the above action. In light of this concern, the Tribunal could not establish with confidence the actions of Private Bell during the engagement on 29 January 1968. As a result, the Tribunal determined that it had available at its disposal insufficient reliable and objective information to enable it to complete a merits review in order to reach a conclusion regarding whether gallantry was displayed by Private Bell during this engagement.

87. While there is limited available evidence of Private Bell's actions during Operations BALLARAT and SANTA FE, the Tribunal accepts that Private Bell gave critical, lifesaving treatment to both Sergeant Sutherland and Lieutenant Gay during these operations, and in doing so, would have acted bravely due to the ongoing presence of the enemy. In doing so, it accepts Mr Bourke's statement that Private Bell quickly *'ran to the front'* after the Claymore had been fired into the A Company position, However, it had at its disposal no further reliable evidence to confirm that Private Bell displayed a level of bravery beyond the standard expected of a platoon medic in Vietnam.

88. While the Tribunal accepts that the medical training provided to Private Bell was truncated, and possibly inadequate, it did not consider this level of training to be unusual for Australian platoon medics during the Vietnam War.

89. Turning to Mr Browne's other claims, he submitted that there was an '*act of malfeasance by the Commander 7 RAR in the unit routine orders number 239 April 1967 which precluded adequate records being maintained*'.⁴⁵

90. The Tribunal considered that no evidence was presented to suggest that an act of malfeasance or maladministration on the part of the chain of command at the time prevented, or was intended to deny, due consideration for a gallantry recognition for Private Bell. In any event, while the potential identification of maladministration may inform a merits review, in itself it would not determine an assessment for a gallantry honour.

91. The Applicant submitted that, '*for reasons unknown the number of awards for gallantry to National Servicemen who served in Vietnam is very small for the number of men who served*'. Mr Browne provided statistics in his written submission to illustrate this claim.

92. In response to this claim the Defence Report states:

'On the surface this could indicate bias towards the Regular Army, however an extensive search of the literature for this and other cases failed to uncover any evidence of this. Conversely, it is well documented that there was no discrimination between regular soldiers and national servicemen in any aspect of service in Vietnam. While the statistics presented in Mr Browne's application may suggest otherwise, they do not include all the variables which when taken into account would show a different picture. For example, the Australian Army Training Team, in which few if any national servicemen served, was the most highly decorated Australian unit in Vietnam. Also, aside from the infantry, engineers and artillery where the numbers were almost equal, all corps (save the Service Corps) had significantly more regular army personnel than national servicemen'.⁴⁶

93. The Tribunal considers that the Applicant's claim in this regard is not central to its considerations. The Tribunal conducts its review of the available evidence to inform an assessment of gallantry, regardless of the service type, or corps of the individual under consideration.

94. Notwithstanding the evidentiary difficulties mentioned above, the Tribunal was able to find that Private Bell was a platoon medic, who, on a number of occasions and in a number of contacts with the enemy, conducted himself in a very professional manner and met the obligations of his duties in full. He was clearly a conscientious soldier who was very highly regarded and respected by those who knew and relied on him. However, for the reasons stated in this report, the Tribunal was unable to find that Private Bell is eligible to be recommended for a gallantry decoration for his service in Vietnam.

⁴⁵ Covering Letter for Applicant's submission to DHAAT dated 10 Mar 2018

⁴⁶ Report into Request for Review of Category 3 Public Submission 088-5714453 Alec Ernest Bell.

95. The Tribunal acknowledges the selfless passion and dedication of the Applicant, Mr Neville Browne, in seeking to bring recognition to Private Bell for his actions in Vietnam. The Tribunal further recognises Mr Browne's own contribution to Australia through his service in the Australian Army.

96. The Tribunal also acknowledges the assistance and co-operation of the two eye-witnesses who provided evidence to the review, Mr Tom Bourke and Mr Allen Clutterbuck, and specifically for their service during the Vietnam War.

DECISION

97. The Tribunal decided to recommend to the Minister that the decision of the Chief of Army, Lieutenant General David Morrison AO, of 5 May 2015, that no further action be taken to recognise Private Alec Bell regarding his actions as a platoon medic with the 7th Battalion, the Royal Australian Regiment during the Vietnam War, be affirmed.