



Australian Government

Defence Honours and Awards Appeals Tribunal

Cooper and the Department of Defence [2018] DHAAT 01 (18 January 2018)

File Number(s) 2016/021

Re **Mr Garry Gordon Cooper DFC**
Applicant

And **Department of Defence**
Respondent

Tribunal Mr M. Sullivan AO, (Presiding Member)
Rear Admiral J. Goldrick AO, CSC, RAN (Retd)
Mr G. Mowbray
Air Vice-Marshal A.J. Quafe AM (Retd)

Hearing Dates 17-18 October 2017

DECISION

On 18 January 2018, the Tribunal recommended to the Minister that the decision of the Chief of Air Force, Air Marshal G.N. Davies, AO, CSC, of 30 September 2016, that the service of Mr Garry Gordon Cooper DFC, during the Vietnam War has been appropriately recognised, be affirmed.

CATCHWORDS

DEFENCE Honour – refusal to recommend the award of the Victoria Cross – Vietnam War

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110VB(1)
Defence Force Regulations 1952 – Regulation 93B and Schedule 3
Defence Legislation Amendment Act (No 1) 2010 – Schedule 1 Part 2
Victoria Cross Regulations, Commonwealth of Australia Gazette (CAG) No S25 of 4 February 1991.

REASONS FOR DECISION

Introduction

1. The applicant, Mr Garry Gordon Cooper DFC, seeks review of the decision of the Chief of Air Force (CAF), Air Marshal G.N. Davies AO, CSC, of 30 September 2016, that Mr Cooper's service during the Vietnam War has been appropriately recognised. In making application for review, Mr Cooper has requested that the whole of his Vietnam service be taken into account, and that he be awarded the Victoria Cross for Australia.

Tribunal Jurisdiction

2. Pursuant to s110VB (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 s110V (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.

3. Regulation 93B of *Defence Force Regulations 1952* defines a defence honour as those honours set out in Part 1 of Schedule 3.¹ Included in the defence honours set out in Part 1 is the Victoria Cross for Australia. The Tribunal considered that the CAF decision that Mr Cooper's service during the Vietnam War has been appropriately recognised constitutes a reviewable decision. Therefore, the Tribunal has jurisdiction to review this matter.

4. In accordance with s110VB (1) of the Defence Act, as the matter under review concerns 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.

Previous Consideration

5. Numerous applications on behalf of Mr Cooper have been submitted to the Defence Department over many years including submissions made to the Defence Honours and Awards Appeals Tribunal's *Inquiry into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour* (the 'Valour Inquiry').² Mr Cooper had not personally made application for the Victoria Cross for Australia until 29 December 2015. The basis of Mr Cooper's application was that while serving as a Forward Air Control (FAC) pilot on secondment to the United States Air Force during the period between 8 April 1968 and 29 October 1968, he was involved in a significant event on 18-19 August 1968 which merited the award of the Victoria Cross for Australia. In his application to the Tribunal dated 7 October 2016, Mr Cooper requested that the whole of his Vietnam service be taken into consideration. While Mr Cooper had not made previous applications himself, his actions during the Vietnam War have been the subject of a USAF review in 1978 and a Defence review in 2000.

6. After completion of his tour of duty in Vietnam, Mr Cooper was decorated for his Vietnam service by the award of an Imperial Distinguished Flying Cross. The citation for his award notes his actions around the 'Y' Bridge near Saigon on 11 May 1968 and '(t)he courage and devotion to duty displayed by Flight Lieutenant Cooper on this and many other occasions throughout his tour of duty...'.³

¹ 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.

² Valour Inquiry, p.343, Table 25-1.

³ Garry Gordon Cooper – Recommendation for Honour and Award dated 30 September 1968. FLTLT G.G. Cooper Personal File NAA: A12372 R219964/8/1, Extract of Folio 1.

7. Mr Cooper was discharged from the RAAF on 30 September 1969. His certificate of service records his honours and awards, at that time, as:

Distinguished Flying Cross
Vietnam Medal
Republic of Vietnam Campaign Medal
Distinguished Flying Cross (USA)
Vietnamese Cross of Gallantry with Silver Star, and
Returned from Active Service Badge.⁴

8. Following his discharge, a campaign commenced for Mr Cooper to receive additional medallic recognition for his RAAF and Vietnam service. Members of the public have approached the Department of Defence on Mr Cooper's behalf, and his claims have been supported by articles appearing in the Australian press over a number of years. On 3 July 1974, Mr Cooper's mother, Mrs Elizabeth Cooper, wrote to the Minister for Defence seeking to facilitate progression of a citation for her son which she said was forwarded to her from Cathay Pacific Airlines, Hong Kong.⁵ Mrs Cooper enclosed a copy of a citation document apparently drafted to accompany the award of a US Bronze Star Medal to her son for his actions on 18 August 1968.⁶ The Hon Lance Barnard, Minister for Defence, responded to Mrs Cooper advising that '*members of our forces are not normally permitted to accept and wear foreign awards*'. Mr Barnard also noted that '*his award of the [Imperial] Distinguished Flying Cross was in recognition of his valour, courage and devotion to duty in Vietnam, including a number of instances which had attracted commendation from allied authorities.*'⁷

9. On 21 November 1974, Mrs Cooper wrote again to the Minister of Defence.⁸ In this second letter, Mrs Cooper included copies of additional documents related to the events of 18-19 August 1968. These documents included a letter from Major General Julian Ewell, United States Army (General Ewell), recommending that Mr Cooper be awarded the US Congressional Medal of Honor for his actions. A narrative description of events was attached to General Ewell's letter. Mrs Cooper also included a copy of a completed USAF form 642 – 'Recommendation for Decoration' recommending her son be awarded a US Bronze Star for Valor for the same action. Mrs Cooper requested the Minister's advice as to whether the Australian Government was in receipt of the '*enclosed reports*' and, if he were unable to help, to whom she should apply to get recognition for her son.

10. Mrs Cooper's second letter and the accompanying documents triggered an exchange of correspondence between Australian and US agencies through the Australian Embassy in Washington. In April 1975, Air Vice-Marshal J.C. Jordan, then Air Member for Personnel, wrote to the Minister for Defence advising that '*the USAF considers that their part in the investigation is completed; no record of any bravery recommendation for ex FLTLT Cooper arising out of actions allegedly performed on 18 Aug 68 is held by that Service*'.⁹

⁴ FLTLT G.G. Cooper Certificate of Service dated 14 October 1969. FLTLT G.G. Cooper Service Record – History File NAA: A11504 R219964/H/1.

⁵ Mrs Elizabeth Cooper Letter to the Hon L. Barnard, Minister for Defence, dated 3 July 1974. Filed as MINREP 004016.

⁶ Citation to accompany the award of Bronze Star Medal to Garry G. Cooper.

⁷ Minister for Defence Letter to Mrs Elizabeth Cooper, dated 21 August 1974.

⁸ Mrs Elizabeth Cooper Letter to the Hon L. Barnard, Minister for Defence, dated 21 November 1974. Filed as MINREP 006155.

⁹ Air Member for Personnel Minute 'Ex Flight Lieutenant G.G. Cooper – Awards for Vietnam Service', dated 15 April 1975. FLTLT G.G. Cooper Service Record – History File NAA: A11504 R219964/H/1, Folio 47.

11. Correspondence held on Mr Cooper's Defence file suggests that while Australian authorities were seeking clarification of Mr Cooper's US awards, the USAF had obtained, and were processing, 'nine other recommendations for awards which were not received by Major (sic) Cooper'.¹⁰ Mr Cooper has provided the Tribunal with a copy of a letter that suggests the recommendations and supporting statements were provided by Mr Cooper via the US Defense Liaison Office in Hong Kong.¹¹

12. In August 1983, Mr Cooper was granted access to review his Defence Personal file under Freedom of Information provisions.

13. On 24 February 1997, Mr F. Kirkland OAM, Secretary General of the Australian National Veterans Association, wrote to the Hon Bronwyn Bishop, Minister for Defence Industry, Science and Personnel seeking an Australian award for Mr Cooper in recognition of his Vietnam service, specifically during the events of 18 August 1968.¹² On 20 May 1997, (the now) Lieutenant General Ewell also wrote in a personal capacity from retirement to the Hon Bronwyn Bishop supporting the award of the Victoria Cross to Mr Cooper.¹³ General Ewell included further copies of the material provided by Mrs Cooper in November 1974. On 20 June 1997, Mr Kirkland wrote again to Minister Bishop suggesting Mr Cooper's actions 'should attract possibly a retrospective VC.'¹⁴ Mr Kirkland's letter included copies of correspondence from General Ewell.

14. On 27 October 1997, Minister Bishop approved the appointment of a review panel to review the actions of Flight Lieutenant Cooper on 18-19 August 1968. The principal objective of the review was to determine whether the actions were worthy of a recommendation for the award of a Victoria Cross. On 12 January 1999, Mr Cooper forwarded a written statement to the review panel detailing his recollections of the events of 18-19 August 1968.¹⁵ The review panel reported on 4 January 2000, finding that it was unable to be satisfied conclusively that the actions took place as described and unable to establish that the actions of Mr Cooper were worthy of the recommendation for the award of the Victoria Cross.¹⁶

15. Subsequent to an enquiry that he submitted in March 1996, Mr Cooper was advised that his service qualified him for the award of an Australian Service Medal 1945-75 with clasp 'THAILAND' and the General Service Medal with clasps 'BORNEO' and 'MALAY PENINSULA'. Following a separate application in December 1997, Mr Cooper was awarded the Australian Active Service Medal (AASM) 1945-75 with clasp 'THAI-MALAY' for his qualifying service in Vietnam, Borneo and on the Thailand/Malaysia border.

¹⁰ Chief, USAF International Affairs Division Minute AF/CVAIA 'Recommendations for Awards (Major Garry C. Cooper, RAAF)' dated 30 October 1978. FLTLT G.G. Cooper Service Record – History File NAA: A11504 R219964/H/1, Folio 136/1.

¹¹ Captain Richard J Latham, USAF Assistant Air Attaché, Hong Kong, Letter to DPMASA2 undated. Provided to the Tribunal by Mr Cooper 20 Nov 2017.

¹² Mr F. Kirkland Letter GC/ewl/24297 to Hon Bronwyn Bishop, Minister for Defence Industry, Science & Personnel dated 24 February 1997. FLTLT G.G. Cooper Service Record – History File NAA: A11504 R219964/H/1, Folio 127.

¹³ Lieutenant General Julian J. Ewell USA (Retd) Letter to Hon Bronwyn Bishop, Minister for Defence Industry, Science & Personnel dated 20 May 1997, FLTLT G.G. Cooper, Service Record – History File NAA: A11504 R219964/H/1 Folio 131/2.

¹⁴ Mr F. Kirkland Letter to Hon Bronwyn Bishop, Minister for Defence Industry, Science & Personnel dated 20 June 1997, FLTLT G.G. Cooper Service Record – History File NAA: A11504 R219964/H/1, Folio 127.

¹⁵ Statement by Garry G. Cooper re 18/19 August 1968 dated 12 January 1999 in letter to Wing Commander G.G. McDonald of the Review Panel, dated 12 January 1999. Department of Defence file PE 98/31495/ Par 4 – Review Panel – FLTLT G.G. Cooper – Eligibility for Award in Vietnam, Folio 2.

¹⁶ Report of the Panel appointed to review the action of FLTLT GG Cooper on 18 and 19 August 1968 dated 4 January 2000.

16. In 2011, a number of submissions, including a submission from Mr Lawrence Schneider, were made to the Valour Inquiry seeking recognition for Mr Cooper's service in the Vietnam War.¹⁷

17. On 25 June 2011, Mr Cooper wrote to the Parliamentary Secretary to the Minister for Defence referencing 'his' submission to the Valour Inquiry which he stated that he had made at the request of then Senator Feeney, requesting that his whole Vietnam service and many US awards be taken into account.¹⁸

18. On completion of the Valour inquiry, the Parliamentary Secretary to the Minister for Defence referred public submissions received (including Mr Schneider's) to the relevant Service Chief for their recommendation or course of action. Following completion of his review on 21 August 2015, Air Marshal Davies advised Mr Schneider that Air Force had recommended no further action be taken in recognition of Mr Cooper's service during the Vietnam War.¹⁹

19. Mr Cooper is the published co-author of the book *Sock it to 'em Baby – Forward Air Controller in Vietnam*²⁰ which recounts his Vietnam experience. His account was co-authored by Mr Robert Hillier. Mr Cooper also provided his recollections to Dr Chris Coulthard-Clark for his book *Hit my smoke! – Targeting the enemy in Vietnam*, published in 1997.²¹

Conduct of the Review

20. On 26 August 2015, Mr Cooper wrote to Mr Wyatt Roy MP, regarding a response to Mr Schneider's submission to the Valour Inquiry. The Hon Darren Chester MP, Parliamentary Secretary to the Minister of Defence, responded to Mr Cooper with the advice that Air Marshal Davies would also provide him with the Air Force position regarding Mr Schneider's submission. Air Marshal Davies provided that response on 28 August 2015.²² The Parliamentary Secretary's advice to Mr Cooper also included guidance that any submission to appeal the decision would need to be made by Mr Schneider unless a new submission was made by Mr Cooper.

21. On 22 October 2015, Mr Schneider wrote to the secretary of the Tribunal seeking to transfer his 'rights of appeal' to Mr Cooper.²³ Mr Cooper made his own application to the Chief of Air Force on 29 December 2015, seeking recognition for his actions during service in the Vietnam War from April to November 1968.

22. On 30 September 2016, Air Marshal Davies wrote to Mr Cooper advising that Air Force had conducted a further exhaustive review of his submission and determined that his service during the Vietnam War has been appropriately recognised.²⁴

23. On 7 October 2016, Mr Cooper lodged his application for review of this decision with the Tribunal.

24. Guidelines developed for the Valour Inquiry suggest that the first step in examining retrospective honours should be the conduct of a review to determine whether due process had been followed. This step should include '*an attempt to determine whether there is a case of maladministration and whether new evidence has come to light*'. The guidelines suggest that if due

¹⁷ Valour Inquiry Submission 14 – Mr Lawrence Schneider.

¹⁸ Mr Garry Cooper Letter to Parliamentary Secretary to the Minister for Defence dated 25 June 2011.

¹⁹ The Hon. Darren Chester MP, Letter to Mr Cooper, 19 September 2015.

²⁰ GG Cooper and R Hillier, *Sock it to 'em Baby, Forward Air Controller in Vietnam*, Allen & Unwin, St Leonards NSW, 2006

²¹ C. Coulthard-Clark, *Hit my smoke! - Targeting the enemy in Vietnam*, Allen & Unwin, St Leonards NSW, 1997.

²² Chief of Air Force Letter AB24638379 to Mr Garry Cooper dated 28 August 2015.

²³ Mr Lawrence Schneider Letter to DHAAT dated 22 October 2015.

²⁴ Chief of Air Force Letter AB28957715 to Mr Garry Cooper dated 30 September 2016.

process had been followed, there was no maladministration, and if there was no new evidence, the original decision should remain unchanged.

25. Notwithstanding this guidance, it should be noted that section 110VB of the Defence Act requires the Tribunal to undertake a merits review of all reviewable decisions, where an application for review has been properly made. Accordingly, the Tribunal proceeded with a merits review of the CAF decision of 30 September 2016 concerning Mr Cooper's service during the Vietnam War.

26. In accordance with its *Procedural Rules 2011*, a public hearing into this matter was conducted in Canberra on 17 and 18 October 2017. Mr Cooper was invited to provide evidence at the hearing. The Tribunal also heard submissions from Colonel Alan McClelland (Retd) and Wing Commander Peter Condon (Retd). Defence was represented at the hearing by Air Commodore John Meier, Director General History and Heritage - Air Force, and Mr Martin James, the Air Force Historian.

27. After the hearing, Defence located and provided copies of the letters written to the Minister for Defence by Mrs Cooper. This material was located on a Ministerial file and the documents comprising Mrs Cooper's submission were marked with Ministerial Representation registration numbers. On 20 November 2017, Mr Cooper provided the Tribunal with a supplementary submission that records his analysis and interpretation of some of the existing documentation. He also provided some additional reference material. On 8 December 2017, Mr Cooper provided his response to additional material provided to him regarding the policy concerning the acceptance and wearing of foreign awards, and to address doubts raised by the Tribunal regarding the veracity of correspondence. Further submissions and material were provided by Mr Cooper on 15 and 17 December 2017.

Defence Records of Mr Cooper's Service

28. Garry Gordon Cooper enlisted 11 March 1960, and was commissioned in the General Duties Branch of the Royal Australian Air Force on graduation from No 39 Pilots' Course, 16 June 1961. He served as a pilot with the RAAF Antarctic Flight for two voyages of the Australian National Antarctic Research Expedition. He then flew Sabre aircraft in Butterworth with No 79 Squadron and Mirage aircraft from Williamtown in NSW. After making a General Application in March 1967 and receiving the necessary training as a Forward Air Controller (FAC), Mr Cooper was posted to South Vietnam as a FAC. Mr Cooper was in the second batch of Australian airmen to serve as FACs in South Vietnam. He served in Vietnam with the 19th Tactical Air Support Squadron, 7th Air Force, USAF, between 8 April 1968 and 29 October 1968, and was assigned to 3rd Brigade, 9th Infantry Division, US Army.

29. Mr Cooper's defence records include an Aircrew Record of Operational Tour. He flew a total of 323 operational sorties in South Vietnam including 31 missions flown in a Command and Control helicopter. His logbook assessment signed by Major Richard Nelson, USAF, is '*Outstanding and Exceptional*'.²⁵ Approximately 20 percent of Mr Cooper's operational flying was conducted at night.

30. Mr Cooper's records include letters of commendation received by the Headquarters of the RAAF Element in Vietnam from 12th Tactical Fighter Wing, USAF. One letter refers to an action on 13 August 1968. The others do not include detail of any specific incident but appear to be endorsements of the first letter. The statements of endorsement are dated 27 August, 30 August and 8 September, 1968.²⁶

²⁵ RAAF Aircrew Record of Operational Tour – FLTLT Garry G. Cooper O219964 dated 8 April 1968 to 29 October 1968. Department of Defence Personnel File – 219964 – Gary (sic) Cooper, Service Record – Personal File – Air Force R/219964/P/1, Folio 56.

²⁶ RAAF Element HQAFV Letter 1228/5/P3(26) to Secretary Department of Air dated 28 September 1968, covering USAF Letter of Commendation dated 16 August 1968 and endorsements dated 27 August 1968, 30

31. Mr Cooper's file also includes documents and a letter from Captain J.E. Dunning, 7th AF, USAF, covering documents related to the award of the US Distinguished Flying Cross for an action on 4 October 1968, and Republic of Vietnam Cross of Gallantry with Silver Star for an action on 28 June 1968. A note of action on the file records these documents being forwarded to Mr Cooper on 26 Aug 196(9).²⁷
32. A copy of Mr Cooper's citation for the US Bronze Star Medal for meritorious service during the period 8 April 1968 to 19 October 1968 is also on file and there is a copy of a US Bronze Star Medal certificate for meritorious service covering his actual period of service - 8 April 1968 to 29 October 1968.²⁸
33. Mr Cooper's Defence records include a transcript of his citation for the Distinguished Flying Cross published in the Commonwealth of Australia Gazette 23/1969. The citation reads: *'For courage and devotion to duty on many occasions during his tour in VIETNAM, including an action on 11 May 1968 when he continually exposed his F.A.C. aircraft to intense ground fire to mark positions for attack by fighter aircraft during an attempt to overrun the 'Y' bridge near SAIGON.'*²⁹
34. Mr Cooper resigned his permanent commission on 30 September 1969.
35. Subsequent to his resignation, Mr Cooper's Defence Service Record has grown to include many duplicate documents, newspaper clippings, and correspondence related to the campaign for Mr Cooper to receive additional medallic recognition for his RAAF and Vietnam service.
36. These later records include confirmation of Mr Cooper's qualification for the award of the Australian Active Service Medal (AASM) 1945-75 with clasp 'THAI-MALAY', the Australian Service Medal (ASM) 1945-75 with clasp 'THAILAND', and the General Service Medal with clasps 'Borneo' and 'Malay Peninsula'. Also on file is a copy of correspondence from the US Embassy in Canberra covering general orders and copies of certificates for the award of the US Army Commendation Medal with "V" device for heroic action on 12 July 1968 and a US Air Medal with "V" device for heroic action on 28 June 1968. Both of these awards were issued on 28 February 1973.³⁰

August 1968 and 8 September 1968. Department of Defence Personnel File – 219964 – Gary (sic) Cooper, Service Record – Personal File – Air Force R/219964/P/1, Folios 58-61 inclusive.

²⁷ USAF Awards Branch, Personal Affairs Division 7th AF Letter to RAAF Hq AFV undated & RAAF Element HQAFV Vietnam Letter 1228/9/P3(21) to Department of Air (DPS) Undated. Department of Defence Personnel File – 219964 – Gary (sic) Cooper, Service Record – Personal File – Air Force R/219964/P/1, Folio 66-70 inclusive.

²⁸ FLTLT G.G. Cooper Personal File.

²⁹ Special Deputy (Air Office) Letter DGPS Records/0129964 to National Secretary Korea and SE Asia Forces Association of Australia dated 23 April 1975. Department of Defence Personnel File – 219964 – Gary (sic) Cooper, Service Record – Personal File – Air Force R/219964/P/1.

³⁰ US Army Attaché Embassy of the USA in Canberra Letter to Flt Lt Garry G Cooper dated October 1980 and attached certificates and citations.

Summary of Mr Cooper's Claim

37. Mr Cooper's application reflects his belief that he has been denied due recognition for his service in Vietnam. Mr Cooper holds the view that Defence has been '*actively resisting his recognition since 1968*'. He has suggested in his application that there has been '*deliberate misinterpretation and manipulation of the facts by Defence administration to make his case fall into a category to suit a desired negative outcome*'. He believes that this has included the '*removal of eye-witness reports as early as 1975 and a deliberate intent to coerce the US awards branch into abandoning their efforts to make an award*'. Mr Cooper's claim for the award of the Victoria Cross is based on the many documents and supporting statements that he has collated, some of which recommend that he be awarded the US Congressional Medal of Honor, or similar. His application is supported by some 293 pages of documentary evidence. A further 66 pages of documentary evidence were provided by Mr Cooper prior to the hearing. After the hearing Mr Cooper presented a supplementary submissions and a further 32 pages of reference documents.

38. Mr Cooper's application also presents arguments which he believes illustrate evidence of maladministration and an argument that evidence presented to Defence by himself, General Ewell and others, represents compelling new evidence. At the hearing, the Tribunal Chair explained to Mr Cooper that having properly made his application for review, the Tribunal, under section 110VB of the Defence Act, was not constrained to only consider maladministration or new evidence, but was required to undertake a full merits review of his case.

39. At the hearing Mr Cooper explained to the Tribunal that the primary basis for his claim for the Victoria Cross was three actions that occurred during his tour of duty. The first occurred on 10 May 1968 for which he claims a US Distinguished Service Cross is 'still in the system'; the second concerned those events of 11 May 1968 that were mentioned in his citation for the Imperial DFC and were recognised by the award of a US Silver Star on 24 November 1980; and the third being his actions on 18-19 August 1968 which have not been recognised. Mr Cooper also told the Tribunal '*that the number of contacts and awards that he has received ... in itself requires consideration for a higher award as he has not heard of anyone else getting involved in so much*'.³¹

Events of 10 May 1968

40. Mr Cooper's claim for consideration of the events of 10 May 1968 is based on a series of documents that he has provided to the Tribunal. The initiating document is a poor-quality copy of a US Army form 638 'Recommendation for Award' raised by Lieutenant Colonel Eric Antila, US Army, on 27 July 1968.³² The recommendation for a (US) Distinguished Service Cross (DSC) includes a statement dated 30 May 1968, that describes FLTLT Cooper directing six airstrikes in support of the 5th Battalion, 60th Infantry, 9th Infantry Division on the morning of 10 May 1968, in a position to the south of Saigon. The narrative describes Mr Cooper flying '*dangerously low over the target areas to mark enemy positions. With total disregard for 12.6mm anti-aircraft fire and 7.62 LMG fire he continuously orbited low over the target area to adjust subsequent fighter passes. When smoke and dust began to obscure the target he flew still closer to more effectively guide the strikes*'.³³

41. The DSC recommendation documents include a copy of an undated statement signed by General Ewell, the commanding General of 9th Infantry Division, supporting the award. The statement is addressed to his junior officer, Captain George Vella Jr, of the Awards Branch of General Ewell's 9th Infantry Division. General Ewell states that during the contact on 10 May 1968, he '*witnessed some of his extraordinary heroism from the C and C helicopter. Despite the continuous*

³¹ Mr G.G. Cooper's summation, Hearing Day 2.

³² Mr G.G. Cooper Application for Review Pages 3.0-3.4

³³ Mr G.G. Cooper Application for Review Page 3.6

*artillery, directed by Lt. Tommy Franks, impacting all around Flight Lieutenant Cooper, he continued his devastating attacks at low level’.*³⁴

42. Also included with the DSC recommendation is a copy of an unsigned and undated witness statement attributed to 2nd Lieutenant Edward Gallup, US Army. This document appears to have been certified as a true copy by a Major Burt, Adjutant of 3rd Brigade, although Mr Cooper has only provided the Tribunal with a copy of a copy. In this statement, 2nd Lieutenant Gallup describes Flight Lieutenant Cooper placing eight air strikes within close proximity of his unit’s position ‘*with devastating accuracy under a hail of intense heavy caliber ground fire. Throughout the whole contact Flight Lieutenant Cooper was no more than 200 metres from our position and the exploding ordnance and napalm, at low altitude. In between air strikes we could clearly see him firing his automatic weapon into the enemy positions through the open window of his small aircraft. Within about one hour Flight Lieutenant Cooper had wiped out the enemy positions allowing us to regroup and take a number of enemy POW’.*³⁵

43. Mr Cooper has provided the Tribunal with a number of supporting statements for the award of the Distinguished Service Cross that he has collected over a number of military reunions from 1999 to 2008.

Events of 11 May 1968

44. Mr Cooper’s claim for consideration of the events of 11 May 1968 is based on another recommendation document package that he has provided to the Tribunal. This package includes a copy of a USAF form 642 ‘Recommendation for Decoration’ raised by Lieutenant Colonel James Patrick, USAF, dated 19 July 1968. The recommendation for a (US) Silver Star includes an extensive narrative that describes FLTLT Cooper’s actions during events of 11 May 1968 in the vicinity of the ‘Y’ bridge, south of Saigon.³⁶ Mr Cooper has included a copy of his certificate that records his award of the US Silver Star on 28 November 1980. His citation records that ‘*on 11 May 1968 ... with complete disregard for his own safety, Flight Lieutenant Cooper repeatedly exposed himself to heavy enemy anti-aircraft fire in order to mark and identify enemy targets and succeeded in directing deadly, accurate airstrikes upon the enemy positions.*’³⁷

Events of 18-19 August 1968

45. Mr Cooper’s claim for consideration of the events of 18-19 August 1968 is also based on a recommendation document package that he has provided to the Tribunal. This package, or elements of the package, were provided to Defence in 1974 and have also appeared in representations made to the Minister for Defence Industry, Science and Personnel. This package commences with a copy of a letter signed by General Ewell, dated 20 August 1968, addressed to Mr Cooper’s commanding officer, Lieutenant Colonel James Patrick, USAF, through the Commanding General of 7th Air Force. General Ewell’s letter recommends ‘*the immediate award of the Congressional Medal of Honor to Flight Lieutenant Cooper*’ based on an attached ‘*narrative description of his gallant actions on 18 August 1968.*’³⁸ Mr Cooper presented the Tribunal with a copy of General Ewell’s narrative description.³⁹

³⁴ Mr G.G. Cooper Application for Review Page 3.7

³⁵ Mr G.G. Cooper Application for Review 3.12

³⁶ Mr G.G. Cooper Application for Review 17.0-17.3

³⁷ Mr G.G. Cooper Application for Review 17.5

³⁸ Mr G.G. Cooper Application for Review Pages 12.1

³⁹ Mr G.G. Cooper Application for Review Page 12.6. Pages 12.5 and Pages 12.6 appear to be of the same document. At the hearing, Mr Cooper stated that Page 12.5 was the narrative provided by Colonel Archer and Page 12.6 was the narrative provided by General Ewell.

46. In synopsis, General Ewell's narrative has Mr Cooper flying in a command helicopter as Air Liaison Officer in company with an unnamed pilot and an unidentified Brigade Commander, late in the afternoon of 18 August 1968. After operating for some 30 minutes under heavy fire, the pilot is said to have been shot dead and the Brigade Commander stunned by the same bullet that *disintegrated the pilot's head*. Mr Cooper is also said to have been hit by this same bullet ricocheting off his helmet. Described as being dazed and *covered in blood and brain tissue*, Mr Cooper is said to have reached across and overpowered the dead pilot to reduce the *tremendous speed* of the aircraft's rate of descent and arrest *what would have been a fatal impact with the ground*. While still under enemy fire, Mr Cooper is then said to have assisted the Brigade Commander to a nearby dyke. The narrative makes reference to *friendly troops* hearing the impact of automatic weapons fire *slamming into the wreckage* of the helicopter. The narrative describes Mr Cooper and the Brigade Commander establishing a defensive position, isolated from friendly forces and waist deep in water. Enemy soldiers are described as making several attempts to reach their position during the night of 18 August 1968, and Mr Cooper is described as warding off attacks and killing *at least ten of the enemy at close range*. The following morning, Mr Cooper and the Brigade Commander are picked up by a rescue helicopter, again under heavy fire. The position of the helicopter is said to have required Mr Cooper and the Brigade Commander to run to the helicopter to board it. The narrative claims that Mr Cooper ran out of ammunition while covering the Brigade Commander being hoisted aboard the helicopter. Mr Cooper is said to have been attacked by two enemy soldiers whom he killed with his empty hand gun before leaping into the helicopter.

47. The package includes a USAF form 642 'Recommendation for Decoration' raised by Lieutenant Colonel James Patrick, USAF, dated 23 August 1968. The recommendation for a (US) Bronze Star for Valor includes a mostly verbatim copy of the narrative description provided by General Ewell. The narrative presented in the recommendation commences with the explanatory note that, *'Although Flight Lieutenant Garry G. Cooper has been strongly recommended for the Medal of Honor, regulations do not permit foreign nationals to receive this award. Flight Lieutenant Cooper can not be recommended for the second highest award, the Air Force Cross, as his gallantry did not take place in the air. Therefore the maximum I can submit is the Bronze Star Medal for Valor which is totally inadequate and I strongly urge the British to consider Cooper for their highest decoration.'* The document also includes a header note *'*N.B. – Consider for upgrade'*.⁴⁰

48. The package includes a very poor-quality copy of a document dated 19 August 1968 attributed to Colonel Robert E. Archer. The document appears to be a file copy of a letter addressed to the Commanding General of 9th Infantry Division covering a statement for inclusion in Flight Lieutenant Cooper's *'CMH recommendation'*. The letter is not signed. The letter states; *'I owe my life to Flight Lieutenant Cooper. His conduct and service were of the highest order'*.⁴¹ At the hearing, Mr Cooper told the Tribunal that this document was found by researchers on US files sometime around 2000. Mr Cooper has also provided a copy of the narrative statement which he claimed at the hearing was the statement attached to Colonel Archer's letter.⁴² That statement is identical to that said to have been attached to General Ewell's letter to Lieutenant Colonel Patrick. The copy of the narrative statement provided by Mr Cooper has been marked with a reference stamp: '006155', Colonel Archer's letter has not been stamped with this reference number.

49. Mr Cooper has also provided the Tribunal with a copy of a letter from Colonel James Hoag, USAF, Deputy Commander for Operations, 12th Air Force, dated 19 August 1968, in which he states that two of his F-4 pilots had been working with Forward Air Controller, callsign Tamale 35,⁴³ on 18 August 1968. The letter identifies *'Captain Gary Cooper of the Australian Airforce'* and states *'Captain Cooper's helicopter crashed very close to the hostile position'*. The letter continues; *when last seen, Tamale 35, distinctive by his Australian flight-suit, was half carrying an Infantryman*

⁴⁰ Mr G.G. Cooper Application for Review Pages 12.2-12.3a

⁴¹ Mr G.G. Cooper Application for Review Page 12.4

⁴² Mr G.G. Cooper Application for Review Page 12.5

⁴³ Tamale 35 is the personal callsign used by Mr Cooper during his Vietnam missions.

towards an embankment under what must have been highly hazardous conditions'. The identity of the F-4 pilots is not recorded.⁴⁴

50. Mr Cooper has included three statements of commendation dated 27 August, 30 August and 8 September 1968.⁴⁵ These commendations are copies of the documents described at paragraph 30 that make no reference to the events of 18-19 August. Mr Cooper has also included a copy of a letter sent to Wing Commander MacDonald, RAAF, by Colonel William Walker, USAF, (Retd) dated 14 January 1998, in which Colonel Walker claims to have written the narrative description for Colonel Patrick's signature.⁴⁶

51. Mr Cooper has provided a copy of a statement provided by Colonel Richard Nelson, USAF, (Retd) dated 10 April 1999, in which he states that he debriefed Mr Cooper after the events of 19 August 1968, and sent him on leave. Colonel Nelson claims that he was instructed by General Ewell that he '*must not reveal details about the impending award or action*'. Colonel Nelson further claims that he was told by someone at 'AAF HQ' in Cholon '*that they already had a copy of the Medal of Honor recommendation and would investigate the matter*'. He claims that he provided '*a statement that Cooper was on authorized duty on August 18*', in response to an Australian request.⁴⁷

52. Mr Cooper has provided the Tribunal with a copy of an unsigned document citing '*Garry G. Cooper 1LT O219964 US Army*' for bravery and devotion to duty for events on 18 August 1968. The citation states that it is enclosed '*with the award of the Cross of Gallantry with Palm*'. The document has been prepared for the signature of '*M.General Nguyen-viet-Thanh, CG, IV Corps and IV CTZ, Republic of Vietnam*'. This document identifies Colonel Archer as the officer carried by '*1LT Cooper*' to a safe area. This citation describes '*1LT Cooper*' carrying Colonel Archer to a safe area and fighting off continued enemy attacks. The document states that '*1LT Cooper killed 10 enemy soldiers, the last two with his empty weapon*'.⁴⁸ Mr Cooper also provided a copy of the associated certificate.⁴⁹

53. Included in the package of material provided by Mr Cooper is a copy of a citation document for the Bronze Star Medal. This citation describes the events of 18-19 August in a very similar manner to General Ewell's narrative. Mr Cooper has added a note to this document which states: '*This is not a downgraded Medal of Honour. It is the interim BSM awarded in the field by Colonel Archer pending the processing of the higher award.*'⁵⁰

54. Mr Cooper has also provided copies of a certificate and general order announcing his award of a Purple Heart medal for wounds received in action on 18 August 1968.⁵¹

55. Mr Cooper has then provided the Tribunal with copies of correspondence seeking medallic recognition on his behalf. On 19 September 2001, General Ewell wrote to US Senator Hagel seeking his support.⁵² The letter includes an attachment which summarises Mr Cooper's Vietnam service and seeks consideration for him to be awarded the Medal of Honor. The summary claims Mr Cooper was responsible for killing 1034 enemy and notes '*Cooper's service to the US in saving so many of its' nations lives which could run into thousands*'.⁵³

⁴⁴ Mr G.G. Cooper Application for Review Page 12.7

⁴⁵ Mr G.G. Cooper Application for Review 12.8-12.9

⁴⁶ Mr G.G. Cooper Application for Review Page 12.11

⁴⁷ Mr G.G. Cooper Application for Review Page 12.13

⁴⁸ Mr G.G. Cooper Application for Review Page 12.15

⁴⁹ Mr G.G. Cooper Application for Review Page 13.1

⁵⁰ Mr G.G. Cooper Application for Review Page 12.31

⁵¹ Mr G.G. Cooper Application for Review Pages 14.0-14.1

⁵² Mr G.G. Cooper Application for Review Page 12.18

⁵³ Mr G.G. Cooper Application for Review Pages 12.19-12-21

56. On 20 July 2013, a further USAF form 642 'Recommendation for Decoration' was raised by James K. Gibson, USAF (Retd) seeking a (US) Air Force Cross for Mr Cooper based on events of 18-19 August 1968.⁵⁴ This recommendation is accompanied by a photograph of Mr Cooper's helmet said to have been '*retrieved from the wreckage*'.⁵⁵ Mr Gibson's narrative is similar to the narrative attributed to General Ewell, Colonel Patrick, and Colonel Archer, with the exception that Colonel Archer is identified as the Brigade Colonel and the pilot is said to be a '*Warrant Officer pilot*'. Mr Cooper is described as directing F4 fighter aircraft at the time the helicopter is hit. On rescue, the Brigade Commander is described as being assisted aboard the helicopter rather than hoisted, and Mr Cooper is described as killing two of the enemy with '*his empty AR-15*' (rifle) rather than an empty hand gun.

57. The final document in the package is a copy of an unsigned and undated letter from Captain John Dunning, USAF, to Cathay Pacific Airways Ltd, Tan Son Nhut, Saigon.⁵⁶ There is no letterhead on the copy. The document is marked with a 'Received' stamp that appears to record a date in 1974 – although this reference is barely readable. The letter is covering '*attached decorations pertaining to Flt Lt Garry G Cooper ... forwarded for your information and necessary action*'. The letter notes that '*(t)he Bronze Star Medal is an additional award while the other documents are duplicates not required by this office*'. The letter notes 14 attachments including at attachment 6: '*7 statements*'. Mr Cooper has added a note to this document recording that he was able to find all of the attachments on his 'FOI file' except for the statements at attachment 6.

The Defence Submission

58. The Defence submission to the Tribunal is based on a review conducted by the Directorate of History – Air Force (DH-AF).⁵⁷ This Directorate was tasked to review the submission lodged by Mr Cooper in December 2015, and also the history of his nomination to Defence from 1968. The focus of the DH-AF review was to consider whether there was any failure by the RAAF to process Mr Cooper's nomination appropriately.

59. The DH-AF review found:

- a. No evidence of any nomination for an award related to events on 18-19 August 1968 being received by the RAAF until a copy of the nomination was provided by Mr Cooper's mother in 1974.
- b. No evidence of any nomination in relation to events of 18-19 August 1968 on any surviving related file.
- c. Evidence of Mr Cooper's nomination for the award of a DFC which included information related to his service with US forces in Vietnam on 9 April and 11 May 1968.
- d. Evidence that there were procedures and policies in place for the USAF awards process for foreign nationals, to be communicated through to Australia.
- e. FLTLT Cooper was awarded an Imperial DFC for his actions during his tour of Vietnam.
- f. The majority of records provided to DH-AF were copies of US and Australian records of poor quality and of uncertain provenance.

⁵⁴ Mr G.G. Cooper Application for Review Pages 12.28-12.29

⁵⁵ Mr G.G. Cooper Application for Review Page 12.30

⁵⁶ Mr G.G. Cooper Application for Review Page 12.32

⁵⁷ DH-AF Review of Honours and Awards Submission – FLTLT GARY (*sic*) COOPER O219964 DH-AF fAB4627618-AB28987180 dated 29 September 2017

- g. After the RAAF was provided with copies of Mr Cooper's nomination documents in 1974, a concerted effort was made to verify the nomination with the USAF.
- h. As a result of a 1975-78 USAF review, a United States Air Force Cross would be awarded if eyewitness accounts and the identity of the Brigade Commander, who FLTLT Cooper is claimed to have saved, could be obtained.
- i. No correspondence from the USAF confirming any further action.

60. The DH-AF review found no evidence of maladministration or interference with the honours and awards process extant in 1968-75. The Defence submission to the Tribunal made a number of observations regarding Mr Cooper's submission. Among these observations, the Tribunal considered the following to be pertinent to its consideration:

- a. Many of the documents provided by Mr Cooper are of poor quality and uncertain provenance.
- b. The recommendation for the award of the Medal of Honor made by the commander of the US 9th DIV, MGEN Julian Ewell, to CO 19 TASS, LTCOL Patrick, and the subsequent nomination by CO 19TASS (both dated August 1968) did not appear on any known files, Australian or US, until a copy of the paperwork was sent to the RAAF by Mr Cooper's mother in 1974.
- c. DEFAIR received a message in April 1975 indicating that the USAF search for the nomination within their files was complete, although Defence also observed that previous correspondence suggested the US search was limited by their archiving practices.
- d. While withholding such an award pending eyewitness accounts of the incident of 18-19 August 1968, and verification of the identity of the US Brigade Commander whose life FLTLT Cooper is claimed to have saved, the maximum award that was considered by the USAF after their review in 1978, was a US AFC.
- e. A subsequent nomination for FLTLT Cooper to receive an end-of-tour Bronze Star identifies a number of actions by FLTLT Cooper and the esteem in which he was held by MGEN Ewell, but contains no reference to any actions of 18-19 August 1968.
- f. Mr Cooper's claims that the RAAF failed to respond to a USAF request for information are not supported by the records on file.
- g. There is no evidence that the RAAF withheld any information from any USAF enquiry. Mr Cooper's claim that the RAAF held eyewitness accounts to the events of 18-19 August 1968, but failed to provide them to the USAF are baseless.
- h. There are numerous statements on FLTLT Cooper's Service file from USAF and US Army officers which detail the skill and ability demonstrated by FLTLT Cooper during his service with the USAF in Vietnam.
- i. Mr Cooper supplied in his recent submission an account claimed to have been written by US Army Colonel Robert Archer on 19 August 1968, concerning the events of 18-19 August 1968. The statement is written in the third person and is a very poor copy of unknown provenance. The Defence submission makes the observation that if the original document were located and its provenance established, it would have bearing on Mr Cooper's submission and on the findings of the USAF review of 1975-78.

- j. Defence records refer to two USAF F4 pilots who claimed to have witnessed an individual wearing an Australian flying suit assisting a US Army member exit a crashed helicopter on 18 August 1968. The Defence submission notes that the DH-AF review considered these statements, if verified, could have had greater bearing on the Australian review of 1997-2000, but would not in themselves establish anything more than it was highly probable that FLTLT Cooper was able to extract a US Army member from a crashed helicopter on which they were both passengers.
- k. The DH-AF review did not locate any record which suggested the Bronze Star medal that Mr Cooper claims was awarded to him as an interim measure, was in fact awarded on an interim basis.

61. The Defence submission concludes that any maladministration of Mr Cooper's Honours and Awards nomination was addressed by the USAF review of 1975-78 and that any shortcomings in the Australian consideration for the merits of Mr Cooper's case were addressed by the independent merit review directed by the Minister for Defence Industry, Science and Personnel in 1997-2000.

Summary of Mr Cooper's Oral Evidence⁵⁸

62. Mr Cooper made a brief statement of introduction. He described his posting to serve with US 7th Air Force and his assignment to 9th Infantry Division, US Army, in Vietnam in April 1968. He described receiving very limited in-country training and told the Tribunal that the Tet offensive started within a week of his arrival.⁵⁹ Mr Cooper described the first 13 days of May as period of non-stop fighting as the Viet Cong and North Vietnamese regiments attempted to enter Saigon. Mr Cooper explained the military action centred on the 'Y Bridge and the canal running along the south of Saigon. Mr Cooper told the Tribunal that during that period, he was nominated for a number of US awards as listed in his submission. He noted recommendations arising from 11 May 1968, with Medal of Honor references in two statements.

63. Mr Cooper described working a period of three months without a day off, and the extra duty to fly with Unit Commanders on the Command and Control helicopter keeping him very busy. Mr Cooper outlined the events of 18-19 August 1968. He described a lead-up period where he was typically flying FAC shifts from midnight to 0300h. That period culminated in a non-flying shift worked on 17 August 1968 at the Air Force desk in the 9th Infantry Division Operations Centre that finished at 0100h. He stated that at 0500h he was called to operate as Air Liaison Officer on the command and control helicopter with Colonel Archer.

64. Mr Cooper explained that the events of 18-19 August 1968 were well documented and that he preferred to rely upon his submission for the description of specific events. Mr Cooper confirmed his agreement for the Tribunal to proceed through the documentary evidence in order to address the many questions arising. Mr Cooper was able to assist the Tribunal in offering advice and interpretations that could explain some of the anomalies noted.

65. Mr Cooper gave the Tribunal a brief overview of the history of his claims. Mr Cooper explained his understanding that recommendations for US awards were taken out of the American system and sent to the Australian Air Force or Army Headquarters where they were filed. Mr Cooper offered his belief that, rather than being processed in the US honours and awards system, US

⁵⁸ Given the absence of other witnesses and the extent of the material provided by Mr Cooper, the Tribunal's examination of documentary evidence at the hearing extended to two days. These reasons for decision only discuss items considered by the Tribunal to be relevant to its consideration.

⁵⁹ The Tet offensive commenced in late January 1968 during the lunar New Year (or 'Tet') holiday. The term usually refers to the January – February 1968 offensive but includes the so-called 'Mini-Tet' offensives that took place in May and August 1968.

recommendations for Australian personnel were forwarded to the Australian headquarters to be processed for an Australian equivalent award.

66. Mr Cooper described receiving a US Silver Star, Distinguished Flying Cross, Bronze Star and Army Commendation Medal at a ceremony held after the war when he was working in Jeddah. He also described being called to the US Embassy in Colombo for a similar award ceremony. Mr Cooper described receiving one of his Vietnamese awards from a Vietnamese General on a parade held in Dong Tam.

67. Mr Cooper claimed that in most cases, he received copies of recommendations that were submitted for him to receive awards. He told the Tribunal that in recent years, researchers such as Mr Bruce Swander, Mr Alan Kisling and Mr Keith Nolan had found recommendations in US archives. He attributed their awareness of the need to collect copies of these documents to General Ewell's active search for supporting information.

68. Mr Cooper described the emergence of USAF documentation in 1974. He said a package of documents had been forwarded to his registered home (Australian) address by his employer, Cathay Pacific Airways, due to him being on leave at the time the documents were received by the company. Mr Cooper told the Tribunal that his mother had on-forwarded these documents to the Minister for Defence. He was quite clear in his statement to the Tribunal that he had not sighted the documents; had no knowledge of the documents that were forwarded by his mother; and that no copies were retained by his mother or himself. Mr Cooper noted significant political and press interest around that time but he could not explain how his story had entered the public domain. On day two of the hearing, Mr Cooper was invited to consider that, on the basis of his evidence, the first time he could possibly have seen the documentation provided by his mother would have been when he examined his Defence file in August 1983 under Freedom of Information provisions. Mr Cooper accepted this conclusion.

69. Mr Cooper described his instrumental role in gaining medallic reward for all Australian FACs, and some others who served in Vietnam. He outlined his efforts with Colonel Eugene Rossel, US Air Force (Retd), in raising USAF documentation that enabled the award of 130 US Air Medals to Australian airmen, including himself, in 2008. The Tribunal noted that the copy of Mr Cooper's own recommendation form for this medal as provided to the Tribunal, was dated 3 October 1968, and was signed by Lieutenant Colonel Patrick. Mr Cooper told the Tribunal that he had retained this document from the time that he left Vietnam in 1968. For the others who received awards in 2008, Mr Cooper described a process where he called for information from the applicants and then typed blank USAF forms with that information in the format of his 1968 document.

70. Mr Cooper told the Tribunal that Colonel Rossel had also been working with General Ewell over a number of years to progress an application for Mr Cooper to receive a (US) Distinguished Service Cross (DSC). He described supporting statements presented to the Tribunal as having been collected by Colonel Rossel over the course of a number of military reunions between 1999 and 2010. Mr Cooper described his recommendation for the (US) DSC as having been considered by both USAF and US Army.

71. Mr Cooper was requested to review the statement that he provided to the Defence Industry, Science and Personnel Minister's review panel in 1999, describing the events of 18-19 August 1968.⁶⁰ The Tribunal noted that this description of events differs from the narrative description provided by General Ewell. Mr Cooper stated that he stood by the accuracy of this account. In responding to the Tribunal's observation that the account he had provided for Dr Chris Coulthard-Clark's book *Hit my smoke!*⁶¹ was different again in that it contained no reference to him having killed any enemy soldiers, Mr Cooper explained that he deliberately withheld this detail as he did not like talking about it with

⁶⁰ Mr Garry G. Cooper Letter to Wing Commander G.G. MacDonald dated 12 January 1999

⁶¹ Coulthard-Clark, *Hit my smoke!*, pp. 61-62.

Dr Clark and did not feel it appropriate to publish such detail for general readership. He also told the Tribunal that he felt ashamed of what he had done, and did not want it 'broadcast around'.⁶² In response to the Tribunal's observation that he held no such reservations for his memoir *Sock it to 'em Baby*, Mr Cooper claimed that his co-author was responsible for the inclusion of this detail. In his final summation to the Tribunal, Mr Cooper returned to this issue and explained that while he was not comfortable providing full detail for Dr Chris Coulthard-Clark's publication, he had been encouraged to set the record straight in *Sock it to 'em Baby*. Mr Cooper then told the Tribunal that the account appearing in *Sock it to 'em Baby* was the most accurate.⁶³

72. In the narrative ascribed to General Ewell, Mr Cooper is described as warding off enemy attempts to reach his and the Brigade Commander's position after the helicopter crash. He is described as killing at least ten enemy soldiers at close range. At the hearing Mr Cooper told the Tribunal that the killing of ten enemy soldiers was actually a joint effort between himself and Colonel Archer.

73. Mr Cooper told the Tribunal that the identity of the Brigade Commander involved in the events of 18-19 August 1968 was not known until he was identified by General Ewell at a much later date. He was uncertain as to the date that General Ewell confirmed the Brigade Commander's identity. Mr Cooper's submission included a copy of General Ewell's letter to Colonel Patrick recommending the immediate award of the Congressional Medal of Honor. The copy provided by Mr Cooper has been post-annotated with the comment: '*The Brigade Commander mentioned above was Colonel Robert E. Archer, Commanding Officer, 2nd Brigade, 9th Infantry Division*'. The annotation is signed by General Ewell but is undated.⁶⁴ The Tribunal observed that a facsimile copy of General Ewell's letter to Colonel Patrick had been forwarded to Defence by Mr Cooper on 19 December 1996.⁶⁵ Since this copy is absent any post-annotation, the Tribunal concludes that General Ewell had not identified Colonel Archer as late as 19 December 1996 - the date of transmission. Mr Cooper could not recall how he had obtained the post-annotated document, or when he had received it, but agreed that it indicated that the identification of Colonel Archer did not occur until sometime after 19 December 1996.

74. Mr Cooper was asked to review a copy of a version of a USAF memorandum that appears on Australian files in a package of documentation related to General Ewell's submission to the Minister for Defence Industry, Science and Personnel. The memorandum is dated 30 October 1978, and includes the typewritten annotation: '*Eyewitness report found on Australian Files. Officer saved was Lt Col Edwin van Deusen (brother-in-law of Gen Westmoreland)*'.⁶⁶ Mr Cooper had provided the Tribunal with a copy of this same memorandum, absent the annotation.⁶⁷ Noting that at some point after this document was raised in 1978 that the identity of the Brigade Commander was thought to be Lt Col van Deusen, the Tribunal sought Mr Cooper's view on this document. Mr Cooper could not assist the Tribunal with any knowledge of this annotation.

75. Mr Cooper told the Tribunal that the identity of the Brigade Commander had actually been available, but had been overlooked for many years. He has provided the Tribunal with two items of documentary evidence that he believes support this position. The first was said by Mr Cooper to be a copy of an individual daily roster for 18 August 1968. The document records Cooper being assigned 'ALO' duty at time 0500 with the remark: *RPT, MRF Pad Col Archer Can Giuoc, Rach Kien, Cai Be,*

⁶² Mr Cooper's summation Hearing Day 2.

⁶³ Cooper & Hillier, *Sock it to 'em Baby*, pp. 205-215.

⁶⁴ Mr G.G. Cooper Application for Review Page 12.1

⁶⁵ Facsimile transmission time 0904 dated 19-12-1996. From 'Cooper 61 7 2894368' Department of Defence Personnel File – 219964 Cooper, Garry Gordon – History (H) – Air Force R219964/H/1 Folio 136/1

⁶⁶ Chief, International Affairs Division, HQ USAF Minute 'Recommendations for Awards (Major (sic) Garry C. Cooper, RAAF)' AF/CVAIA dated 30 October 1978.

⁶⁷ Mr G.G. Application for Review Page 12.0

Saigon.⁶⁸ Mr Cooper told the Tribunal that these roster documents were never available prior, but typically compiled a day or two after the event, and that he retains the original copy of this document. The second document is the Republic of Vietnam decree described at paragraph 52. At the hearing, Mr Cooper was not able to give the Tribunal any details as to how this document came into his possession. In Mr Cooper's supplementary submission to the Tribunal he has included a copy of an email from Mr K. Nolan dated 10 July 2006, which forwarded a copy of 'a VN Honor Medal, Cross of Gallantry with Palm', found in the 'Archives in St Louis'. Mr Cooper noted in his supplementary submission that this was the 'Vietnamese copy'.⁶⁹ In his email, Mr Nolan invited Mr Cooper to enter 'an agreement' should he want further research done.⁷⁰

76. In a document provided by Mr Cooper, Colonel Walker (Retd) has claimed that he raised the Recommendation for Decoration paperwork for Colonel Patrick's signature.⁷¹ Mr Cooper told the Tribunal that he had no input into the recommendation and that he did not provide any written statement. Mr Cooper told the Tribunal that he believes that General Ewell interviewed Colonel Archer on the Colonel's release from hospital following their rescue on 19 August 1968. He believes that Colonel Archer then raised the narrative statement that appears in subsequent accounts. He also believes that General Ewell then forwarded that narrative to Colonel Patrick suggesting the Medal of Honor award and the then Major Walker compiled the recommendation for Colonel Patrick's signature – without any direct input from Colonel Archer or Mr Cooper.

77. With regards to the helicopter crash on 18 August 1968, Mr Cooper told the Tribunal that the Brigade Commander was initially unconscious in the aircraft. Mr Cooper also described him as being 'stunned'. General Ewell's narrative description includes specific detail of Mr Cooper's actions in reducing the rate of descent of the doomed helicopter and overcoming injury to assist the unknown Brigade Commander from the crashed aircraft to a nearby dyke. Regarding that description, Mr Cooper was unable to provide any explanation as to how this account could have been raised without his personal input, except to speculate that it would have been fairly obvious and simply presumed to have happened that way. Mr Cooper speculated that either Colonel Archer provided General Ewell with the narrative following his release from hospital on 19 August 1968, or Major Richard Nelson would have passed on some detail to General Ewell after debriefing Mr Cooper late in the evening of 19 August 1968. Major Nelson's account, provided in a statement dated 10 April 1999 (see para 51), does not include this detail.

78. The Tribunal noted that there are three very similar, but different versions of the USAF form 642 'Recommendation for Decoration' nominating Mr Cooper for the Bronze Star for Valor - for the events of 18-19 August 1968. All three versions appear on Defence files.⁷² Two of these versions have been stamped '006155'.⁷³ The stamped versions include underlining of the text '*I strongly urge the British to consider Cooper for their highest recognition*'. One of these stamped versions includes a hand-written annotation: '*NOTE supplied by Mrs Cooper. Placed on file 9DEC74*'. A third version of the recommendation documentation also appears in Defence files. This version has no stamps or annotations and some text is highlighted, but in a different manner. There is no underlining, but the first paragraph of the narrative description has been outlined with a box.⁷⁴ This third version appears

⁶⁸ Mr G.G. Cooper Application for Review Page 12.10

⁶⁹ Mr G.G. Cooper Submission to Tribunal dated 20 November 2017, Page 4.

⁷⁰ Keith W. Nolan email to Garry Cooper dated 10 July 2006. Provided to the Tribunal by Mr Cooper 20 Nov 2017.

⁷¹ Mr G.G. Cooper Application for Review Page 12.11

⁷² The versions of the document that have been stamped '006155' are Pages 12. 2, 12.29, 12.3 and 12.39 of Mr Cooper's application for Review. . The third version received from Mr Cooper on 19 December 1996 is located on the Department of Defence Personnel File – 219964 Cooper, Garry Gordon – History (H) Air Force R/219964/H/1, Folio 125/2 & 125/3.

⁷³ After the hearing, the Tribunal established that this marking is a Ministerial Representation number. The number 006155 was applied to the correspondence received from Mrs Cooper dated 21 November 1974.

⁷⁴ Department of Defence Personnel File 219964, Cooper, Garry Gordon – History (H) Air Force, R219964/H/1, Folio 125/2.

in two items of correspondence. The first appearance is a facsimile received by Defence from Mr Cooper on 19 December 1996, and the second is attached to the letter sent to the Hon Bronwyn Bishop by General Ewell on 20 May 1997.⁷⁵ Mr Cooper was unable to comment at the hearing on the provenance of these versions of the recommendation document, but later suggested that *'the paragraph blocking and underlining was probably done by me and others in trying to make emphasis'*.⁷⁶

79. Statements of commendation for Mr Cooper appear on his Defence file in a context that makes no association with the events of 18-19 August 1968. Mr Cooper stated that he did not know how these statements became associated with those events in his submission to the Tribunal, nor was he able to confirm for the Tribunal to which actions, on what dates, those statements refer.

80. Mr Cooper has provided the documents that are attributed to Colonel Archer. Mr Cooper could not provide the Tribunal with any specific information regarding the provenance of these documents. Mr Cooper was not aware of where they had been located although he told the Tribunal that the letter attributed to Colonel Archer was found by researchers on US files sometime around 2000.

81. Mr Cooper's submission includes a copy of a *'Citation to Accompany the Award of the Bronze Star Medal to Garry G. Cooper'*.⁷⁷ This document is the only evidence provided to the Tribunal that suggests Mr Cooper was awarded anything as a consequence of his actions on 18-19 August 1968. Mr Cooper told the Tribunal that he does not hold the original of this citation nor any other related documentation. He told the Tribunal that the citation (copy) was found on Defence files. He told the Tribunal that he added the notation: *'This is not a downgraded Medal of Honour. It is the interim BSM awarded in the field by Colonel Archer pending the processing of the higher award'*. Mr Cooper told the Tribunal that despite his claim to have received this award 'in the field', he had received nothing, nor been advised of any field award, during his service in Vietnam.

82. In his submission to the Tribunal, Mr Cooper included a copy of the letter described at paragraph 57 from Captain Dunning, USAF, to Cathay Pacific Airways. A copy of the letter was provided by Mr Cooper in his rebuttal of the report of the Defence Industry, Science and Personnel Minister's Review Panel and was included in his submission. In that rebuttal, a copy of this letter is presented by Mr Cooper as evidence that the documents originated from the USAF Awards Branch. Mr Cooper describes the documents being forwarded to himself in Hong Kong before being on-forwarded to his Australian address. At the hearing Mr Cooper said that he did not recall how he had located this document. Since the letter is actually addressed to the Cathay Pacific office in Saigon, Mr Cooper told the Tribunal that it may have been handed to him as he transited Saigon as a pilot with Cathay Pacific Airways. Mr Cooper also told the Tribunal that he did not have a signed copy of the document and he noted that it appears to be a 'flimsy' file copy as it has neither signature nor letterhead.

83. Mr Cooper included with his submission a letter from General Ewell dated 27 March 2009.⁷⁸ This letter includes General Ewell's recollection of debriefing Colonel Archer on 19 August 1968. He claims that *'Colonel Archer awarded Cooper an immediate in the field Bronze Star for Valor and requested initiation of the Medal of Honor'*. General Ewell also includes his critical judgment on the independence of the *'Defense Honors and Awards Tribunal (sic)'*. The Tribunal notes that General Ewell was 93 years old when this statement was prepared and his comment on the Tribunal is surprising as it seems too parochial to have been made by a retired US General. In earlier correspondence dated 13 February 1998, General Ewell stated that *'(w)hile I do not recall the details*

⁷⁵ Department of Defence Personnel File 219964, Cooper, Garry Gordon – History (H) Air Force, R219964/H/1, 131/6 and 131/7

⁷⁶ Mr G.G. Cooper Submission to Tribunal dated 20 November 2017. Page 2.

⁷⁷ Mr Cooper's Application for Review Page 12.31.

⁷⁸ Mr Cooper's Application for Review Pages 12.23 and 12.34.

of the incident after thirty years, I will stand by the accounts in both my letter and in Colonel Patrick's account'.⁷⁹ In responding to the Tribunal's concern regarding the level of detail contained in General Ewell's 2009 letter, Mr Cooper claimed that the letter would have been drafted by Mrs Ewell.

84. The Tribunal asked Mr Cooper to consider the copy of USAF form 642 'Recommendation for Decoration' raised by Lt Colonel Patrick on 30 October 1968 for his 'end-of-tour' Bronze Star Medal.⁸⁰ Mr Cooper provided the Tribunal with copies of this documentation. In the narrative description, Lt Colonel Patrick makes specific mention of General Ewell writing to Brigadier General Halt, USAF, commending the 3rd Brigade ALO/FACs for their exceptional performance. The Tribunal queried why Lt Colonel Patrick had not made any reference to the letter that he had received from General Ewell directing Mr Cooper be awarded an immediate Medal of Honor, or the action itself. Similarly, the Tribunal noted that Lt Colonel Patrick had identified pending awards, but not the pending Bronze Star for Valor. Mr Cooper could only speculate that the inconsistency reflected the incompetency of the vast US system or that the matter remained too confidential to be mentioned. Mr Cooper did express his belief that the 'Medal of Honor recommendation' had actually been forwarded to RAAF Headquarters Vietnam for processing.

85. Mr Cooper told the Tribunal of his belief that Colonel Archer had been posted from 9th Division for disciplinary reasons. He also expressed the view that the helicopter in which he was flying on the 18 August 1968, was an ARVN⁸¹ aircraft commandeered by Colonel Archer. Mr Cooper told the Tribunal that the helicopter pilot was an American flying for the ARVN unit, 'kidnapped' by Colonel Archer for the mission. He claimed that Colonel Archer's actions on that day were unauthorised. Mr Cooper also told the Tribunal that, two days later, Colonel Archer had landed a helicopter to give chase to Viet Cong soldiers on foot. Mr Cooper told the Tribunal that General Ewell took a dim view of this action and had arranged for the Colonel to be awarded a Bronze Star for the action but had him posted from the Division. Mr Cooper explained that an American researcher, Mr Bruce Swander, had developed this scenario to explain why shortly after the incident, Colonel Archer was no longer in the Division and why his identity remained unknown for so many years. Mr Swander had also developed a scenario to explain the absence of any US record of the helicopter pilot's death on 18 August 1968. Mr Cooper spoke of an email from Mr Swander suggesting that the pilot may have been extracted alive from the crashed helicopter.⁸² Mr Cooper seemed to give credence to Mr Swander's hypothesis even though he had been convinced at the time that the pilot was dead.⁸³

86. Regarding the nature of his combat experience in Vietnam, Mr Cooper described entering a period of quite intense activity shortly after his arrival. His initial combat experience coincided with a period of heavy fighting around the Y-bridge in Saigon associated with the Tet offensive.⁸⁴ He described the operations of his small unit of FACs between 6 and 13 May 1968 as being 'non-stop

⁷⁹ Lieutenant General Julian J. Ewell Letter to Wing Commander McDonald dated 13 February 1998, included in Mr Cooper's Application for Review, page 30.4.

⁸⁰ Mr G.G. Cooper Application for Review, pages 16.0 to 16.3.

⁸¹ Army of the Republic of Vietnam.

⁸² Immediately after the hearing, Mr Cooper provided the Tribunal with a sequence of email exchanges with Mr Swander dating from 2002 which canvass various scenarios.

⁸³ The narrative description states that Mr Cooper was '*covered in blood and brain matter*' whilst still in the helicopter, prior to impact. In his account to the Defence Industry, Science and Personnel Minister's review, Mr Cooper states that '*the pilot had basically no head remaining*'. In Mr Cooper's diary he states that '*the pilot had his head blown apart*' and '*later that night they brought in what was left of the chopper pilot. Yuk*'.

⁸⁴ The Tet offensive commenced in late January 1968. The term usually refers to the January – February 1968 offensive but includes the so-called 'Mini-Tet' offensives that took place in May and August 1968. By 12 May, the fighting around the Y-Bridge Saigon and Tan Son Nhut Air Base was over as North Vietnamese forces withdrew from the area. Of note, the fighting around the Australian Task Force Fire Support Base Coral commenced on the night of 13 May 1968.

round the clock' and a significant amount of his flying being conducted at night. Mr Cooper described the practice of flying at very low altitude under illumination and the potential for disorientation that occurred when transitioning from areas of illumination into darkness. Mr Cooper told the Tribunal that he was aware of the 'arbitrary rule' to maintain a minimum operating altitude of 1500 foot in order to avoid small arms fire, but described to the Tribunal the necessity to descend below this altitude in order to increase effectiveness in identifying and marking targets. He also explained that operating at a very low altitude afforded some protection as it made the task of tracking his aircraft from the ground more difficult for the enemy. He told the Tribunal that adherence to a minimum operating altitude was not an operating requirement, and said that having many aircraft operating at 1500 feet had led to a lot of collisions.

Summary of Oral Evidence provided by Air Commodore John Meier and Mr Martin James representing the Department of Defence

87. Air Commodore Meier and Mr Martin James provided oral evidence on behalf of the Department of Defence. Flight Lieutenant Julie Dryden, the research officer assigned to Mr Cooper's case, and Flight Lieutenant Simon Hall also attended the hearing.

88. Mr James was invited to describe the processes that Defence has followed to investigate Mr Cooper's submission. Mr James stated that Defence had conducted a review of every honours and awards file from the Vietnam era to establish what material was provided by the US to Australia. The review found a number of files from around 1972 that had been transferred from Australian Headquarters Vietnam to the Headquarters Australian Advisory Group, Vietnam – this being the major headquarters that was to remain in Vietnam on the return to Australia of the other forces in place. This transfer included honours and awards files. The review found that when these files were returned to Australia, they were mis-catalogued as relating to the Advisory Group rather than the Australian Task Force overall. While this represented a significant find, and some Air Force related material was located, the review did not find any material relating to Mr Cooper's claim.

89. Mr James described Defence action in going through Mr Cooper's personnel files in order to establish the chronology of material being placed on file. At the hearing Mr James told the Tribunal that Defence had found references to some material that was not on his personal file. Mr James has since advised that: *"when we found that the six digit reference number stamped on some of Mr Cooper's documents was in fact a reference number for incoming ministerial correspondence we were able to identify a previously unknown file – 'AF251/5/49 Pt 1 - Min Reps by Mrs E. Cooper on behalf of son ex FLTLT G.G. Cooper concerning decorations'. This file contained the material we had not been able to locate previously. Consequently I no longer have any concerns regarding the completeness of the material held by Defence concerning this matter. Rather, I am of the view that in preparing responses to the Minister ... several records were consolidated onto the MINREP file."*⁸⁵ Mr James observed that Mr Cooper's file had clearly been handled a lot over the years and noted a certain repetition of material held within the file. Mr James told the Tribunal that establishing a really clear and concise chronology from material being placed on file was largely impossible. Mr James told the Tribunal that material provided by Mrs Cooper was present, some of which was replicated, and that his impression was that most of the material was placed on file post-1973, most likely in 1974-75.

90. The review found no reference to suggest that any material was in Australian Defence Force possession prior to 1974, either in Australia or Vietnam. Mr James noted a reasonably concentrated effort on Air Force's behalf to try to resolve what happened to the US nomination and to obtain information. There was contact with the USAF that initiated an American review of the case between 1975 and 1978 from which the USAF drew its own conclusions. Requests for information from the Americans appear on Mr Cooper's file and there is evidence that responses were forthcoming. In

⁸⁵ Mr Martin James email to Mr Jay Koppelman, dated 4 December 2017.

terms of eyewitness accounts, there are statements on file but none that refer to the events of 18-19 August 1968.

91. Mr James told the Tribunal that Air Force had acted appropriately in responding to the information provided by Mrs Cooper. Mr James observed that there were notes on Mr Cooper's file regarding concerns of the Minister and publicity around Mr Cooper's claim. Mr James felt that the spirit with which Air Force engaged in reconciling what they felt to be an outstanding American nomination was both honest and correct.

92. Regarding the file reference suggesting Lt Col Edwin van Deusen had been identified as the Brigade Commander from an eyewitness report found on Australian files (paragraph 74), Mr James told the Tribunal that Defence was not aware of any eye-witness statements of any kind being held on Defence files. Mr James believed he had seen a note that suggested Lt Col van Deusen's identification may have been an administrative error.

93. Mr James confirmed that Defence holds no record of Mr Cooper being awarded the US Bronze Star Medal for the events of 18-19 August 1968, other than the copy of the citation document received from Mrs Cooper in July 1974.

94. Regarding the transfer of personal information between USAF and Australia via Cathay Pacific Airways office in Saigon (paragraph 82), Mr James said he had not seen another instance of material being transferred in this manner. Air Commodore Meier described a more normal process would be for such information to be forwarded via the nearest Air Attaché. He said that he would expect a military to military transfer or direct transfer to an individual, rather than a transfer to a civilian employer. He found the apparent despatch of material to the Cathay Pacific Airways office in Saigon to be an 'exception to normal process'.

95. Mr James told the Tribunal that Air Force had reviewed Mr Cooper's service when considering his nomination for the Imperial DFC. Air Force was aware of similar USAF reviews that considered the whole of his Vietnam service. Defence is of the view that Mr Cooper's award of the Imperial DFC included a review of his entire Vietnam service with the exception of the events of 18-19 August 1968.

96. To explain the absence of any contemporary Defence reference to Mr Cooper's actions of 18-19 August 1968, Mr James felt that the flow of information from the US and Vietnam simply must not have included any such reference. He told the Tribunal that he has not seen any evidence of any conspiracy to deny awards nor was he aware of any diplomatic sensitivity between the US and Australia that may have had a bearing. Mr James added that from an historical perspective, both the US and Australia were looking for good news stories to emerge from the Vietnam War – particularly after the Tet offensive that had commenced earlier in 1968.

97. Mr James explained Defence concern about the provenance of documents noted at subparagraph 59f, related to the very poor quality of available copies and the inability to confirm from where they had originated. Mr James explained that the absence of provenance limited the ability of Defence to accord weight to the documents.

98. After the hearing, Defence provided the Tribunal with copies of the letters provided by Mrs Cooper to the Minister for Defence.⁸⁶ These letters confirm that Mrs Cooper forwarded a copy of the Bronze Star Citation document on 3 July 1974 and, following the Minister's response, sent a second letter dated 21 November 1974, enclosing the recommendation documentation.⁸⁷ The Tribunal has been provided with the Ministerial file which confirms that the reference numbers which appear on

⁸⁶ Mr Cooper has also been provided with copies of the same documentation.

⁸⁷ Material provided 23 October 2017.

the documents (i.e. 004016 and 006155) are Ministerial Representation numbers stamped on Mrs Cooper's correspondence of 3 July 1974, and 21 November 1974, respectively.

Summary of Colonel McClelland's Evidence

99. Colonel McClelland stated that between 1995 and 1999 he had served as Assistant Military Attaché in the Australian Embassy in Washington. Colonel McClelland described the Embassy's Head of Defence Staff fielding a request from Australia to conduct research of American archives in relation to Mr Cooper's Vietnam service, and his involvement. As a serving Army officer, Colonel McClelland was drawn into the search for information when it became clear that US Army records would require examination. Colonel McClelland recalls a Mr Boyland of the US Archives being not too happy with the request as he had done the task about three or four times before. Colonel McClelland had not seen any previous input from Mr Boyland and felt that he brought a 'fresh set of eyes' to the task.

100. Colonel McClelland was given access to US Army logs and periodic reports from 1968, associated with US operations in Vietnam. He described to the Tribunal the complexity of the US Army structure and the difficulty he faced in tracking data. The US Army followed a practice of maintaining a unit structure in place and posting individuals into and out of that structure. Colonel McClelland explained that this practice meant that he could not reference unit end-of-tour reports that could otherwise have provided useful summaries.

101. Although he searched the whole 1968 archive, Colonel McClelland only located one log that appeared to be relevant. No detail from that log matched Mr Cooper's description of events.

Summary of Wing Commander Condon's Evidence

102. Wing Commander Condon also served as a FAC with 19th Tactical Air Support Squadron in support of 1st Brigade, 9th Infantry Division. This was the same unit as Mr Cooper, although Mr Cooper flew in support of the 3rd Brigade. Wing Commander Condon served in Vietnam between April and December 1969. In the absence of other witnesses, and in light of Mr Cooper identifying Wing Commander Condon as someone with knowledge of his honours and awards history, the Tribunal sought evidence from Wing Commander Condon to confirm the nature of the FAC role. Wing Commander Condon was also identified by Mr Cooper as his '*leading antagonist*' and the Tribunal sought to understand the nature of his concerns.

103. In his written submission, Wing Commander Condon provided his personal view of the veracity of Mr Cooper's account of the events of 18-19 August 1968. In short, Wing Commander Condon does not believe that the helicopter incident as described by Mr Cooper happened. In his submission, Wing Commander Condon described his invitation to serve as the American unit's Awards and Decorations officer and his belief that Mr Cooper had served in this role before him. Wing Commander Condon also noted that although he served alongside Mr Cooper in Australia in 1969, the first time he had any knowledge of the events of 18-19 August 1968 was when a multi-page article appeared in *PIX* or *PEOPLE* magazine in the early 1970s.⁸⁸ Wing Commander Condon's submission included the negative results of his attempts to gain confirmation of Mr Cooper's experience from US FAC/ALOs who had served alongside him. At the hearing Wing Commander Condon told the Tribunal that he had no direct knowledge of Mr Cooper's service in Vietnam.

104. Mr Cooper was provided with a copy of Wing Commander Condon's submission and furnished the Tribunal with his rebuttal prior to the hearing. At the hearing, the Presiding Member advised Wing Commander Condon and Mr Cooper that the Tribunal had noted Wing Commander Condon's submission and had no wish to cover the dispute between the two of them, given that Wing

⁸⁸ The Tribunal has been unable to locate this article.

Commander Condon had no direct knowledge of Mr Cooper's Vietnam experiences. Rather the Tribunal invited Wing Commander Condon to provide his description of the FAC role in Vietnam.

105. Wing Commander Condon described being a member of a team of about five or six pilots operating two to three aircraft to maintain one aircraft and a controller airborne in the Brigade Area of Operations continuously during daylight hours. He described the primary role as conducting close air support in close proximity to friendly forces under fire. Normally each FAC would control a mix of pre-planned and on-call missions and conduct visual reconnaissance. Wing Commander Condon told the Tribunal that the daily program was developed the evening before by the team member assigned programming duty, in their social room, utilising a 'Chinagraph' pencil to write the schedule on a plastic covered program.

106. Wing Commander Condon told the Tribunal that on most days that he flew, he had at least one pre-planned strike to conduct. He described the use of illumination from Dakota aircraft allowing the activity to proceed into night hours. Wing Commander Condon described the general procedure of working with the supported ground troops, contacting strike aircraft, coordinating the arrival of strike aircraft on task, marking the target with smoke, adjusting aim points, clearing the strike, and providing the fighter aircraft with bomb damage assessment. Wing Commander Condon also described the secondary roles of coordinating artillery and conducting visual reconnaissance.

107. Wing Commander Condon told the Tribunal that it was difficult to say how often he came under fire from the ground. He described the O-1 Bird Dog aircraft as a slow aircraft that could be flown with the windows open and hence being able to 'hear things'. He did not recall hearing shots being fired at him, but did recall being told that he was being fired upon. However, he noted that he could often hear the sound of gunfire in the background of radio transmissions from the ground. Wing Commander Condon said that he usually maintained an operating altitude of 1500 feet in order to avoid small arms fire although he descended to lower levels to mark targets. On occasion he descended as low as 200 feet.

108. Wing Commander Condon confirmed that he did not fly in Vietnam at the same time as Mr Cooper. Wing Commander Condon told the Tribunal that he has not received any Australian gallantry awards associated with his Vietnam service. However, he told the Tribunal that he had received a US Air Medal in 2008 along with many other Australian veterans, through the efforts of Mr Cooper as described at Paragraph 69. Wing Commander Condon told the Tribunal that in recent years he had received photocopies from Mr Cooper of a US DFC Certificate and citation, along with three other awards in his name, which an associate of Mr Cooper claimed to have located in an archive in St. Louis. Wing Commander Condon has not confirmed these awards nor sighted any original documentation.

Australian Gallantry Awards

109. Australian service personnel received honours and awards including the Victoria Cross under the Imperial system until February 1975 when the Government introduced the Australian system. The Victoria Cross for Australia was established by Letters Patent on 15 January 1991 to be:

'the highest decoration for according recognition to persons who, in the presence of the enemy, perform acts of the most conspicuous gallantry, or daring or per-eminent acts of valour or self-sacrifice or display extreme devotion to duty'.⁸⁹

⁸⁹ Commonwealth of Australia Gazette No. S25, 4 February 1991, Letters Patent, 15 January 1991.

110. The honour is governed by Regulations set out in the Schedule:

...

Conditions for award of the decoration

3. *The decoration shall only be awarded for the most conspicuous gallantry, or a daring or pre-eminent act of valour or self-sacrifice or extreme devotion to duty in the presence of the enemy.*

...

Making of awards

7. *Awards of the decoration shall be made, with the approval of the Sovereign, by Instrument signed by the Governor-General on the recommendation of the Minister.*⁹⁰

111. The Commonwealth of Australia Gazette (CAG) No S25 dated 4 February 1991, records the creation by Letters Patent of other Australian Gallantry Decorations which provide for recognition of members of the Defence Force and certain other persons who perform acts of gallantry in action.⁹¹ The conditions for these awards are referred to as the Gallantry Decorations Regulations (the Regulations).

112. The Regulations stipulate the following conditions for award of decorations at Regulation 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.*

112. Regulation 7 stipulates that awards of a decoration shall be made by the Governor-General on the recommendation of the Minister.

Policy and Process regarding the Award, Acceptance and Wearing of Foreign Awards

113. At the hearing, Mr Cooper outlined his understanding of the process that was followed for Australian members identified for US recognition. Mr Cooper is of the belief that US recommendations for Australian personnel were forwarded to the relevant Australian headquarters to be processed for an Australian equivalent award. Mr Cooper appeared to the Tribunal to hold the view that if a US recommendation were raised, the relevant Australian authority was obliged to issue an equivalent honour or award. Mr Cooper is also convinced that the legal restrictions on the acceptance and wearing of foreign awards was interpreted by Australian authorities as requiring any recommendation for a foreign award to be '*intercepted*' to prevent processing.⁹²

114. In a letter to Lieutenant General Westmoreland from Air Marshal Sir Valston Hancock, then Chief of the Air Staff, two options are outlined for foreign recognition of Australian service personnel in Vietnam. The first notes that the acceptance of foreign orders, decorations or medals is subject to the Queen's prior permission. Air Marshal Hancock notes that such permission is normally only granted in special circumstances and the process for approval is managed through diplomatic channels with the requirement that applications be submitted through the Australian Ambassador in the first instance. Air Marshal Hancock then notes that this policy does not preclude a second option for

⁹⁰ Commonwealth of Australia Gazette No. S25, 4 February 1991, *Victoria Cross Regulations*.

⁹¹ Commonwealth of Australia Gazette No. S25 - dated 4 February 1991.

⁹² Mr G.G. Cooper, Supplementary Submission, 20 Nov 2017.

foreign operational commanders to submit nominations within the Australian system for an RAAF award.⁹³

115. The National Archives contain a contemporary (1967) service paper that summarises regulations and practice regarding the acceptance and wearing of foreign awards for service in Vietnam. In a discussion of individual gallantry awards, that paper states:

*For those (individuals) not directly under his (Commander Australian Force Vietnam) operational control, arrangements have been made with the Commanders of the United States and Vietnamese forces to forward citations for acts of gallantry and distinguished service by these personnel to COMAFV, who takes them into consideration when processing his own recommendations. Where it is considered that a particular action is deserving of recognition, the appropriate British award is recommended and processed in the usual way.*⁹⁴

116. A subordinate paper entitled 'A Guide to Current Policy on Awards for Operational Service in the Republic of Vietnam'⁹⁵, provides additional guidance described by Air Commodore Newstead, Commander of the RAAF element HQAFV, as being 'most useful'.⁹⁶ As well as outlining the scale for operational awards, the guide includes information that would have applied in Mr Cooper's case.

117. Regarding the policy of not accepting foreign awards, the guide notes that the 'attitude (to foreign awards) does not prevent Australian Servicemen receiving Vietnamese or American awards to prevent any misunderstanding, ill-feelings, or embarrassment at the time. The restriction applies rather to official recognition by the Queen and thus permission to accept and wear any such awards on Her uniform'.⁹⁷ The guide goes on to reiterate Air Marshal Hancock's advice to Lieutenant General Westmoreland that submissions to the Queen from United States authorities would not normally receive consideration. It describes a process where 'the arrangement is to submit a recommendation through the Australian Military authorities for consideration for a British award. These recommendations should be rewritten to conform with the required format and then submitted for an appropriate British award. Recommendations will not be accepted on the basis of "The British equivalent to ... a particular foreign award"'.⁹⁸

118. It is quite apparent that issues around the acceptance and wearing of foreign awards were topical, and confusing, during the period of Mr Cooper's service in Vietnam. Mr Cooper is correct in his understanding that the process for US recommendations, if followed, would have been for any recommendation to be forwarded to COMAFV. At that point, such a foreign recommendation would be considered in context with all other nominations for Australian servicemen. If COMAFV wished to proceed with an award, the foreign recommendation would be re-structured and re-drafted to conform to the Australian layout and process. A very clear distinction was drawn against any suggestion of equivalence of awards or anything detracting from COMAFV's discretion for nominations.

⁹³ Air Marshal Sir Valston E. Hancock, KBE, CB, DFC Letter to Lieutenant General William C. Westmoreland. NAA A2880 5-5-4 Vietnam Foreign Awards Policy.

⁹⁴ Acceptance of Foreign Awards for Service in Vietnam, Attachment to PAOC(P) Minute No. 4/67, paragraph 5. NAA A2880 5-5-5 Vietnam Foreign Awards Policy.

⁹⁵ A Guide to Current Policy on Awards for Operational Service in the Republic of Vietnam. NAA A2880 G.G. 5-5-4 Vietnam.

⁹⁶ Air Commodore G.T. Newstead Letter to Group Captain A.D. Charlton, CBE, dated 14 June 1968. NAA A2880 5-5-5 Vietnam Foreign Awards Policy. Air Commodore Newstead served as the Commander of the RAAF element Vietnam and Deputy Commander of Australian Forces Vietnam between April 1968 and March 1969.

⁹⁷ 'A Guide..' paragraph 17.

⁹⁸ 'A Guide..' paragraph 18.

119. It is also clear that Australian authorities were seeking agreement from British authorities at that time, to enable the acceptance of foreign awards and were quite sensitive to the fact that recommendations for foreign awards were being held pending resolution. The guide notes that *‘if any recommendation is considered worthy of recognition for a British award it should be rewritten and submitted for a British award and acknowledges that possible duplication of awards (should foreign awards be accepted [by the Queen]) should not be taken into account when considering a member for a British award. The essential point is that a British award is available, and if the deed performed warrants it, the member should be recommended. If he subsequently is allowed to wear a foreign award for the same action, that will be his good luck’*.⁹⁹

THE TRIBUNAL’S CONSIDERATION

Mr Cooper’s Records and Decorations

120. Mr Cooper’s defence records have become confusing through the duplication of material, but a clear picture emerges of his experience in Vietnam. Combined with his own description of events and the description provided by Wing Commander Condon, the Tribunal has concluded that the role of a FAC in Vietnam was both dynamic and critical to the effective application of air-delivered firepower in close support of ground troops engaged with the enemy. The Tribunal concluded that Mr Cooper was regarded as a very effective FAC.

121. Mr Cooper has received many awards that recognise his service. His Defence records include the following:

- Distinguished Flying Cross (Imperial) for his courage and devotion to duty on many occasions during his tour of Vietnam, including his actions on 11 May 1968.
- Australian Service Medal 1945-75 with clasp ‘THAILAND’.
- General Service Medal with clasps ‘Borneo’ and ‘Malay Peninsula’.
- Australian Active Service Medal (AASM) 1945-75 with clasp ‘THAI-MALAY’.
- Vietnam Medal.
- US Army Commendation medal for meritorious achievement 7-11 May 1968.
- US Air Medal with ‘V’ device for heroism 28 June 1968.
- Republic of Vietnam Cross of Gallantry with Silver Star for his actions 28 June 1968.
- US Distinguished Flying Cross for heroism on 4 October 1968.
- US Bronze Star Medal for his service 8 April 1968 to 19 October 1968.
- Republic of Vietnam Campaign Medal.

122. In addition to this record, Mr Cooper has provided documentation that indicates he has also been awarded:

- US Purple Heart for wounds received 1 June 1968.
- US Bronze Star Medal for his service 8 April 1968 to 29 October 1968.
- US Air Medal for meritorious achievement 12 May 1968.
- US Distinguished Flying Cross (first Oak Leaf cluster) for heroism 6 May 1968.
- US Silver Star for gallantry in action 11 May 1968.
- US Bronze Star with ‘V’ device for heroism 18 June 1968.
- Purple Heart for wounds received 18 August 1968.
- Republic of Vietnam Cross of Gallantry with Palm for action 18 August 1968.
- US Army Commendation Medal for heroism 12 July 1968.

⁹⁹ ‘A Guide..’ paragraph 21

- US Air Medal for Meritorious Achievement 8 April 1968 to 28 April 1968.
- US Air Medal first through ninth Oak Leaf Clusters 29 April 1968 to 29 October 1968.

123. Mr Cooper also produced documentation that suggests he has been recommended for, but not received the following awards:

- US Distinguished Service Cross for his actions 10 May 1968.
- US Bronze Star with 'V' device for his actions 18-19 August 1968.
- US Air Force Cross for his actions 18-19 August 1968.

124. The Tribunal notes the extraordinary number of decorations that Mr Cooper has been awarded or claimed over the course of his seven-month service in Vietnam but finds that, taken in isolation, the number of awards that he has received or claimed has little bearing on the merits of his claim for the award of a Victoria Cross for Australia or any other Australian gallantry award. Rather the Tribunal was obliged to seek more direct evidence of merit.

Australian Policy on Recognition of Foreign Awards

125. In his application, Mr Cooper suggested that Defence has actively resisted his recognition since 1968. The Tribunal accepts that the application of Australian policy on the acceptance and wearing of foreign awards and the impact of the quota system that was applied to Imperial awards during the Vietnam conflict created confusion at the time, and has led many to perceive the system as being biased against fair recognition. From the contemporary records, it is quite apparent that both Australian and US authorities were equally frustrated by the imposed policy limitations. Rather than fostering active resistance to fair recognition, the Tribunal noted a pro-active approach to ensuring US authorities were well briefed on the Australian policy requirements and were informed of the options available for individual recognition. In noting the historical context, the Tribunal also considered that a good news story of Australian gallantry is more likely to have been welcomed and celebrated rather than wilfully denied and obscured.

Consideration of Mr Cooper's Entire Vietnam Service

126. Although Mr Cooper has requested that his entire service in Vietnam be taken into consideration, most of his service is well documented and has been subject to previous consideration. The Tribunal notes that Mr Cooper's service included some of the most intense operational episodes of the Vietnam conflict, which makes it all the more important to understand whether any individual's actions were over and above what other personnel in equivalent roles were doing around the battlespace. Although the Tribunal is aware that Mr Cooper's original recommendation for an Imperial DFC was explicitly based on events in May and June 1968 and submitted for consideration approximately a month before his departure from Vietnam, it is reasonably satisfied that Mr Cooper's service outside of the events of 18-19 August 1968, and the previous consideration, does not support a recommendation for further or higher recognition. In making this judgement, the Tribunal has considered, amongst other things, the additional material provided by Mr Cooper which provides further details of his actions on 10 and 11 May 1968, as well as in October 1968. It acknowledges that the available evidence indicates that Mr Cooper continued to perform throughout his operational deployment as an effective FAC with all the hazards and challenges involved, but assesses that the Imperial DFC which Mr Cooper received constituted an appropriate award for his service. As the events of 18-19 August 1968 remain in doubt, the Tribunal was obliged to consider those events in some detail.

Consideration of Mr Cooper's Service 18-19 August 1968

127. In making his claim, Mr Cooper has relied on documentation that he has produced. Due to the passage of time, the Tribunal was unable to interview any person, other than Mr Cooper, with direct knowledge of his actions in Vietnam during this period. Accordingly, the Tribunal reviewed the documentation with great care. The Tribunal sought to understand the implications that could be drawn from inconsistencies and duplication that appear between accounts, as well as the wider context of Mr Cooper's service as a FAC. For this reason, apart from the insights provided by both Mr Cooper and Wing Commander Condon as to the work of FACs, it found works such as Dr Chris Coulthard-Clark's *Hit my smoke!* and *The RAAF in Vietnam*¹⁰⁰ to be extremely useful in assessing what were the hazards and challenges faced by the FACs in what was a constantly evolving and highly dynamic operational environment.

128. The Tribunal had difficulty in assessing much of the material which Mr Cooper has provided, in particular in assuring itself of the provenance of many documents. For example, as recorded at Paragraph 83, the Tribunal holds concerns about the provenance of a letter apparently signed by General Ewell just three months before his death in 2009.¹⁰¹ Mr Cooper provided the Tribunal with a copy of another letter signed by General Ewell, written in support of the recommendation for Mr Cooper to be awarded the US DSC for his actions on 10 May 1968.¹⁰² The letter is undated and addressed to a junior staff officer in General Ewell's own headquarters. The Tribunal considers it exceptionally odd that General Ewell would have addressed such a letter to a very junior subordinate in this manner. At the hearing, Mr Cooper expressed his view that the letter was provided from the General to the Captain as a witness statement. This letter also makes specific reference to Lieutenant Tommy Franks who would later achieve significant notice and acclaim as the Commander of US Central Command. The Tribunal considers that the otherwise unnecessary reference to Lieutenant Franks has been included to add weight to the recommendation. The Tribunal finds this to be a most unlikely reference had the letter actually been drafted in 1968.

129. Mr Cooper has provided a copy of another letter allegedly written by General William Westmoreland, former US commander in Vietnam to General Ewell, which comments on the case.¹⁰³ This letter almost certainly could not have come from General Westmoreland. Westmoreland suffered from Alzheimer's disease in the last decade of his life and died on 18 July 2005 at the age of 91 - only two months after the date on the letter of 18 May 2005. Compellingly, Westmoreland's son gave an interview published on 29 May 2005. The resultant article notes that, '*Family members say he still recognizes them and can have a basic conversation but little beyond that.*'¹⁰⁴ While Mr Cooper has subsequently speculated that General Westmoreland may have '*dictated his letter in a lucid phase*' he notes that the General was not a witness to any of his actions and that '*(t)hird person opinions should have no place in a merits review*'.¹⁰⁵

¹⁰⁰ Chris Coulthard-Clark, *The RAAF in Vietnam: Australian Air Involvement in the Vietnam War 1962-1975*, Allen & Unwin in association with the Australian War Memorial, St Leonard's, 1995, see especially pp. 261-282.

¹⁰¹ Lieutenant General Julian J. Ewell Letter dated 27 March 2009. Mr G.G. Cooper Submission Pages 12.23-12.24

¹⁰² See paragraph 41

¹⁰³ General William Westmoreland Letter to General Ewell dated 18 May 2005. Mr G.G. Cooper Submission Page 12.25

¹⁰⁴ Article by Alexander Morrison published on the website GoUpstate.com 29 May 2005

<http://www.goupstate.com/news/20050529/westmoreland-hometown-hero>

¹⁰⁵ Cooper Letter to Mr Jay Kopplemann, Defence Honours and Awards Tribunal dated 8 December 2017.

130. The Tribunal did not consider the letters of commendation that Mr Cooper received in recognition of his actions in Vietnam dated 27 August, 30 August and 8 September, 1968 to relate to the events of 18-19 August 1968.¹⁰⁶ Rather the Tribunal noted that these documents were raised as endorsements to a letter of commendation dated 16 August 1968, regarding Tamale 35's actions on 13 August 1968. These documents were forwarded from the RAAF Element HQAFV to the Department of Air, Canberra, in September 1968. The Tribunal was of the view that these commendations would have been considered during Defence consideration of Mr Cooper's Imperial DFC award, noting that the recommendation for the latter was signed by the RAAF Commander in Vietnam on 30 September 1968.

131. The Tribunal noted that although Mr Cooper claimed to have neither seen nor copied the documentation provided by his mother to the Minister for Defence on 21 November 1974, he nonetheless produced a 'clean' copy of the same recommendation documentation and provided it to Defence by facsimile transmission on 19 December 1996.¹⁰⁷ General Ewell sent another copy of this clean version of the recommendation to the Minister for Defence Industry, Science and Personnel on 20 May 1997.¹⁰⁸

132. The Tribunal also considered the copy of the document that Mr Cooper claimed was the covering letter for material despatched by Captain Dunning, USAF, to Cathay Pacific Airways. This document does not appear on Defence files, but it does bear the Ministerial Representation registration mark '004016', and is therefore part of the package that included the Bronze Star Medal commendation forwarded by Mrs Cooper on 3 July 1974. The letter to Cathay Pacific Airways makes reference to the attachment of a number of documents that do not appear to have been forwarded by Mrs Cooper in either of her letters to the Minister for Defence. The Tribunal noted that the document is very similar (and identical in parts) to a separate, original covering letter for material despatched by Captain Dunning to RAAF HQ AFV, Saigon.¹⁰⁹ Mr Cooper's Defence file records this correspondence being forwarded to Mr Cooper on 26 August 1969.

133. The Tribunal was concerned about the provenance of the letter from Captain Dunning to Cathay Pacific Airways. While the Tribunal determines from the registration mark that the document was forwarded by Mrs Cooper, the document is quite clearly a copy of a file copy of the letter rather than a copy of the original. This makes its origin very uncertain. The Tribunal also considered that the apparent action by the USAF in addressing a package of personal documentation to the Cathay Pacific regional office in Saigon was most unusual. The Tribunal also noted that the typeface used to prepare this letter utilised an 'I' character in lieu of a '1' character throughout. This same characteristic is evident in the US form 642 'Application for Decoration' produced for Lt Colonel Patrick's signature for the events of 18-19 August 1968. This odd typeface characteristic is not evident in any of the other recommendations prepared for Lt Colonel Patrick or in Captain Dunning's other covering letter to Defence although it does appear in the letter from General Ewell that refers to Lt Tommy Franks¹¹⁰ and the duty roster document obtained and produced by Mr Cooper as evidence of Colonel Archer's identity as the Brigade Commander.¹¹¹ The unusual typeface characteristic suggests these documents could have a common source. The Tribunal determined the poor provenance and the peculiar characteristics of the purported letter from Captain Dunning to Cathay

¹⁰⁶ Refer Paragraph 30. RAAF Element HQAFV Letter 1228/5/P3 (26) to Secretary Department of Air dated 28 September 1968, covering USAF Letter of Commendation dated 16 August 1968 and endorsements dated 27 August 1968, 30 August 1968 and 8 September 1968.

¹⁰⁷ The copy provided by facsimile by Mr Cooper differs from the two copies held on Defence files at that time in that it contains no Ministerial referencing marks (006155) and has different highlighting marks in the first paragraph of the narrative description.

¹⁰⁸ Refer Paragraph 78

¹⁰⁹ USAF Awards Branch, Personal Affairs Division 7th AF Letter to RAAF HQ AFV undated. Paragraph 31 refers.

¹¹⁰ See Paragraph 41.

¹¹¹ See Paragraph 75.

Pacific Airways undermined its value as cogent supporting evidence and accordingly gave it little weight.

Identity of the Brigade Commander

134. The Tribunal was struck by the fact that the identity of the Brigade Commander said to have been rescued by Mr Cooper remained unknown for so many years. This was especially concerning for the Tribunal since his eventual identification was attributed by Mr Cooper to General Ewell. General Ewell only had three subordinate Brigades yet failed to make the connection for many years. It appeared to the Tribunal that the Brigade Commander's identity did not emerge until some point well after the USAF determined on 30 October 1978, that it could not proceed to an award¹¹² because of a lack of information i.e. the absence of an eyewitness or the name of the Brigade Commander. For a brief period after October 1978, the Brigade Commander's identity was thought to be General Westmoreland's brother in law. The Tribunal accepts this suggestion was probably erroneous, but it does highlight that the Brigade Commander's identity remained unknown at that time. The sequence of documentation suggests General Ewell's annotation identifying Colonel Archer appeared after 1996.¹¹³ The Brigade Commander's identity was not proposed as being Colonel Archer until after the Colonel's death in 1978¹¹⁴, giving no opportunity for the only other alleged eye-witness to confirm the events of 18-19 August 1968.

135. Some considerable time after the event, key documents have surfaced that purport to identify the Brigade Commander. The first of these is a copy claimed by Mr Cooper to be his duty roster for the day. The second is the detailed Republic of Vietnam decree citing 1LT Cooper for his actions, and awarding the Cross of Gallantry with Palm. Mr Cooper was unable to explain to the Tribunal the provenance of the latter documents¹¹⁵, although he claimed to have kept the duty roster in his personal possession after leaving Vietnam. Noting the importance of the Brigade Commander's identity to the campaign for Mr Cooper to receive the US Congressional Medal of Honor, the Tribunal considered the proposition that the Brigade Commander's identity would have remained unknown had these documents been available to Mr Cooper from 1968, to be most unlikely. The absence of provenance casts doubt on the value of these documents as supporting evidence. The Tribunal can only conclude that these documents must not have been available prior to General Ewell's eventual identification.

136. The third document that has surfaced is a copy of a file copy of a purported letter attributed to Colonel Robert Archer covering his '*attached statement in the third person for inclusion in the CMH recommendation*'.¹¹⁶ Mr Cooper has provided the Tribunal with this document but cannot provide any detail regarding how or where it was located, other than he believes it was forwarded to him by a US researcher around 2000. Mr Cooper also provided a copy of a narrative description that he said was the '*attached statement*'. This copy provided by Mr Cooper cannot be Colonel Archer's original statement as it is a copy of a document that has been stamped with the Ministerial Representation number 006155. To have been marked in this manner, this document must have been included in the Ministerial Representation package sent to the Minister of Defence by Mrs Cooper on 21 November 1974. The narrative document forwarded in that package was attributed to General Ewell. The covering letter attributed to Colonel Archer was not included in the package and by Mr Cooper's own reckoning, did not appear until around 2000.

137. If the events occurred as asserted by Mr Cooper, the Tribunal considered that the Brigade Commander and Mr Cooper could have been the only witnesses to those events of 18-19 August 1968. The Tribunal could place very little weight on the statements said to have been made by two

¹¹² US Bronze Star for Valour later upgraded to the Air Force Cross.

¹¹³ Paragraph 73 refers

¹¹⁴ Cooper, *Sock it to 'em Baby*, p.273

¹¹⁵ Mr Cooper provided a document in his supplementary submission that records the Vietnamese documentation being found in 2006.

¹¹⁶ Paragraph 48 refers – the document is not signed and has been stamped 'RECORD COPY'.

unidentified F4 pilots. In any case, the Brigade Commander and Mr Cooper were the only people said to have witnessed what occurred inside the helicopter and what occurred during the night of 18 August 1968. Mr Cooper gave evidence that he did not write the narrative description. Regardless of who put pen to paper, without input from Mr Cooper the narrative can only be based on the Brigade Commander's recollection of events. That being the case, the Tribunal found difficulty with the absence of the Brigade Commander's identity in the description and the inclusion of detail that occurred during the period when Mr Cooper has described him as being either unconscious or stunned.

Mr Cooper's Recollections of 18-19 August 1968

138. The Tribunal then considered the recollections of the only remaining eye-witness, Mr Cooper. Mr Cooper has provided differing accounts of the events of 18-19 August 1968. The description he provided to historian Dr Chris Coulthard-Clark in 1997 differs from the narrative description of events associated with his Recommendation for Decoration, in that he makes no reference to killing enemy soldiers either during the night or during their rescue the next day. The Tribunal considered that these details would have been regarded by Mr Cooper as being integral to his account. The Tribunal was also unsure about Mr Cooper's claim to have been circumspect in deference to Dr Coulthard-Clark's readership given his reference in that same account to the helicopter's gunners doing a great job '*blasting the VC*'.¹¹⁷

139. Mr Cooper's statement to the Defence Industry, Science and Personnel Minister's Review Panel on 12 January 1999, is a far more modest account in that he did not claim to arrest the helicopter's rate of descent and his claim with respect to fending off NVA/VC attacks is restricted to firing when able to do so under the cover of other gunfire; claiming to have killed only two enemy soldiers during the night. His account of killing a further two enemy soldiers as they made their way to the helicopter also differs from the narrative description that appears in the Recommendation for Decoration.

140. In 2006, Mr Cooper published what he told the Tribunal was the 'definitive' account of the incident.¹¹⁸ In this account, Mr Cooper recalls looking for Colonel Archer by name on the morning of 18 August 1968. He also recalls the name of the helicopter pilot.¹¹⁹ When the helicopter is hit by ground fire, Mr Cooper claims in this account that his helmet was hit by a .30 calibre round and that he was not fully conscious of what was happening during the aircraft's descent. He makes no claim of arresting the aircraft's rate of descent, but describes turning off the aircraft's ignition switches after initial impact. After the crash, Mr Cooper describes removing his helmet at the aircraft and the Brigade Commander as being '*slumped on the dead pilot*'. Mr Cooper states that the Brigade Commander was starting to move and groan as he pulled him from the helicopter. Mr Cooper describes the Brigade Commander and himself killing two VC who happened to be walking in their vicinity during the night. He also recalls firing on other occasions at the Brigade Commander's direction. Mr Cooper describes drawing the attention of a UH1H helicopter the next morning and striking two VC with his empty AR-15 weapon as they made their way to the helicopter. He describes the two VC as '*crumpling to the ground*'.

141. Another account of the events of 18-19 August 1968 appeared on 20 July 2013, when Colonel James Gibson, USAF (Retd) raised another 'Recommendation for Decoration'.¹²⁰ The Tribunal presumes that Colonel Gibson used the passage of time and some coordination with Mr Cooper to correct the narrative description, as he has added the identity of Colonel Archer as the Brigade Commander. Colonel Gibson maintains in the narrative that Mr Cooper took control of the helicopter

¹¹⁷ Coulthard-Clark, *Hit my smoke!*, p.61.

¹¹⁸ Cooper, *Sock it to 'em baby*, pp 193-219.

¹¹⁹ Warrant Officer Jones.

¹²⁰ Paragraph 56 refers. Recommendation for Decoration (AFC) for Garry G. Cooper by Colonel James K. Gibson USAF (Retd) dated 20 July 2013.

to reduce the rate of descent, and personally killed at least ten enemy soldiers during the night and two more with his empty AR-15 before leaping into the helicopter. Colonel Gibson introduces a photograph of a helmet that he claims was recovered from the wreckage.¹²¹ The presence of a helmet in the wreckage accords with Mr Cooper's 2006 account, but not with the account that he provided in 1999 to the Defence Industry, Science and Personnel Minister's Review Panel. In that account, Mr Cooper is quite specific in recording that his helmet and survival beacon/radio were discarded at an embankment, some distance from the crashed helicopter.¹²²

142. The Tribunal is aware of one further reference to the helmet. In an on-line article posted by Mr Phil Buckley on 30 September 2011, Mr Buckley describes Mr Cooper as having taken a bullet to the head during one of his missions. Mr Buckley includes photographs of the helmet with the description: '*as can be seen he took what was most likely a AK-47 7.62mm round through his AFH-1 flight helmet shell, padding and visor shield. As can be seen, the foam lining of the AFH-1 helmet saved Garry's head from been (sic) struck. The padding made the bullet's trajectory deflect slightly as it went through. Garry has kept his flight helmet as a reminder of his "lucky day"*'.¹²³ Mr Buckley claims to be a friend of Mr Cooper's and cites an interview conducted in 2009 as the basis of his article. Mr Buckley relates the events of 18-19 August 1968 as per the recommendation narrative, but does not connect the helmet to those events.

143. The Tribunal accepts Mr Cooper's view that he has no control over what others may write, but the confliction between narratives regarding where the helmet was discarded, casts doubt on the validity of the helmet being presented as evidence of the events of 18-19 August 1968.

144. Mr Cooper's 'definitive' account leaves the Tribunal in doubt regarding key documentation. Notwithstanding Mr Cooper's assurance that he played no role in raising recommendation documents, if the Tribunal were to presume otherwise, then the description of killing ten enemy during the night and then a further two the next morning with an empty hand gun, would be an exaggeration of events. If the Tribunal takes Mr Cooper at his word, the narrative description could only have been provided by Colonel Archer. In that case, Colonel Archer has included details that he did not witness and has attributed a greater role to Mr Cooper than was factual.

Gaps in the Evidence

145. The Tribunal also considered that the inability of researchers to establish the identity of the pilot and confirm details of the downed helicopter has cast doubt over the events. In his memoir, *Sock it to 'em Baby*, Mr Cooper described his being convinced that the pilot was dead and collecting the dead pilot's dog tags at the crash site.¹²⁴ He also recorded in his diary that the dead pilot's body was recovered on the evening of 19 August 1968.¹²⁵ However, no confirmation of the pilot's identity was available to the Tribunal. The identification Mr Cooper provided in his memoir *Sock it to 'em Baby* is not supported by any evidence provided to the Tribunal.

146. Mr Cooper gave the Tribunal his impression of helicopters being regarded as a disposable item in Vietnam due to the frequency of losses. The Tribunal accepts that aircraft losses were a common occurrence, but notes that records were nonetheless kept of most major incidents. Although a number of archival searches have been conducted, no record of this incident has been found. The Tribunal was also concerned by the absence of any general knowledge of the event. Mr Cooper has suggested that his recommendation for the Medal of Honor meant the incident became cloaked in

¹²¹ 'Cooper's helmet retrieved from the wreckage'.

¹²² Mr Garry G. Cooper Letter to Wing Commander G.G. MacDonald dated 12 January 1999.

¹²³ <https://heritageflightgeardisplays.wordpress.com/2011/09/30/sock-it-to-em-baby-raaf-birdog-fac-in-vietnam>

¹²⁴ Cooper, *Sock it to 'em Baby*, p.205

¹²⁵ Mr Brian Tate included a transcribed extract of Mr Cooper's diary in a submission he prepared on behalf of 'a group of interested persons' for the Defence Industry, Science and Personnel Minister's Review Panel. Mr Cooper told the Tribunal that he no longer has possession of his original diary.

secrecy; however, the Tribunal considers the absence of any reference to this action in any official record or in Mr Cooper's end-of-tour documentation to be most unlikely.

'In-the-field' Bronze Star Medal

147. The Tribunal was unable to locate evidence that Mr Cooper received an in-the-field award of a Bronze Star Medal from Colonel Archer. The only available evidence is the copy of a citation that was forwarded to Defence by Mrs Cooper in 1974.¹²⁶ At the hearing, Mr Cooper told the Tribunal that he did not receive anything from Colonel Archer whilst in Vietnam and that he did not see him after his release from hospital on 19 August 1968. In correspondence dated 27 March 2009, General Ewell mentions the award and claims that Colonel Archer requested the initiation of the Medal of Honor. As stated, the Tribunal has difficulty reconciling General Ewell's 2009 recollection with the absence of any reference to Colonel Archer in the recommendation documentation¹²⁷; no mention of an 'in-the-field-award' in his letter of recommendation to Lt Colonel Patrick; and the fact that Colonel Archer's identity remained unknown to General Ewell and others, for many years after the event.

Documents held by Commander RAAF Vietnam

148. In his supplementary submission, Mr Cooper reiterates his belief that a copy of the Recommendation for Decoration documentation forwarded to the Minister of Defence by his mother on 21 November 1974, was held by the Commander RAAF Vietnam from August 1968.¹²⁸ While the Tribunal found no direct evidence to support this theory, had the recommendation been 'active' in the Australian system at that time, the Tribunal considers that the absence of any award is more likely to reflect a merits based decision to not proceed, than a decision to deny due recognition. The Tribunal is unable to accept Mr Cooper's theory. Given the extensive research conducted, the Tribunal must accept the Defence conclusion that there is no evidence of any nomination for an award related to events on 18-19 August 1968 being received by the RAAF until a copy of the nomination was provided by Mr Cooper's mother in 1974.

THE TRIBUNAL'S CONCLUSIONS

149. The Tribunal did not consider that the number of awards that Mr Cooper has either received or claimed in connection with his service in Vietnam provided, on its own, any basis for further recognition.

150. The Tribunal was satisfied that most of Mr Cooper's service in Vietnam has been well documented and considered by appropriate US and Australian authorities on a number of occasions. The Tribunal also considered that Mr Cooper's actions on 10 and 11 May 1968 warranted the recognition that he has already received. The Tribunal assessed these actions against the criteria for Australian gallantry awards and did not consider these actions to warrant higher or further recognition.

151. The Tribunal found that, while the events of 18-19 August 1968 remain in doubt, the various accounts of these events and the material provided by Mr Cooper have also been well considered.

152. The Tribunal concluded that Mr Cooper was regarded as a very effective FAC during the period of his service in Vietnam. The Tribunal also noted that Mr Cooper's service occurred at a time of heightened operational intensity.

¹²⁶ A citation document does not provide evidence of an actual award. For example, Mr Cooper was able to provide the Tribunal with a copy of a citation document for a Silver Star medal that was never awarded.

¹²⁷ General Ewell also commented in 1998 that he did *not recall the details of the incident after thirty years*. Paragraph 83 refers.

¹²⁸ Mr G.G. Cooper, Supplementary submission 20 Nov 2017.

153. The Tribunal concluded that despite the limiting and confusing impact of Australia's policy on the acceptance and wearing of foreign awards during the Vietnam conflict, there were procedures known and in place to facilitate appropriate individual recognition for the highest acts of gallantry.

154. As he had no direct knowledge of Mr Cooper's actions in Vietnam, the Tribunal was unable to give weight to Wing Commander Condon's opinion of the veracity of Mr Cooper's claim. However, the Tribunal was appreciative of the description of the FAC role provided by Wing Commander Condon.

155. The Tribunal regarded the events of 18-19 August 1968 to be pivotal to its consideration of Mr Cooper's Vietnam service.

156. There is no record of Mr Cooper being nominated to COMAFV for gallantry associated with events of 18-19 August 1968.

157. The Tribunal found the absence of the Brigade Commander's identity over many years to be inconsistent with Mr Cooper's 'definitive' account of the events of 18-19 August 1968, and some of the documentary material that has emerged more recently. This inconsistency cannot be expunged by the appearance of additional material and has led the Tribunal to doubt the veracity of some accounts.

158. The Tribunal also found that inconsistencies between subsequent narratives and the implausibility of the Form 642 Description Narrative being an accurate account of either Mr Cooper or Colonel Archer's recollection raised too much doubt for the Description Narrative to be regarded as reliable evidence of what occurred.

159. As a result, the Tribunal considered key documentation provided by Mr Cooper to be unreliable with questionable provenance and did not reliably assist in arriving at what had occurred.

160. The Tribunal also found that details in Mr Cooper's recollections have not been consistent between accounts and have been adjusted to meet prevailing theories. Notwithstanding that the Tribunal could not proceed to a positive recommendation based on the account of a single eye-witness who would also be the beneficiary of that recommendation, the Tribunal also found that Mr Cooper's 'definitive' account of events as described in *Sock it to 'em Baby* to be compromised by other accounts that he has provided.

161. The Tribunal was unable to find evidence that established a sufficient factual basis for the events of 18-19 August 1968.

162. The Tribunal was unable to establish the high level of confidence required to support a positive recommendation for an award of the Victoria Cross for Australia or any other gallantry award. The Tribunal concluded that, while Mr Cooper's service in Vietnam was highly commendable, as recognised by the award of an Imperial Distinguished Flying Cross and other foreign awards, there is insufficient authoritative, consistent and compelling evidence to support the view that Mr Cooper's service in Vietnam constituted the most conspicuous gallantry, or a daring or pre-eminent act of valour or self-sacrifice or the display of extreme devotion to duty in the presence of the enemy. It also found that there is insufficient evidence to justify any other Australian gallantry award additional to the Imperial Distinguished Flying Cross which Mr Cooper has, in the view of the Tribunal, fully earned.

DECISION

163. The Tribunal recommends to the Minister that the decision of the Chief of Air Force, Air Marshal G.N. Davies, AO, CSC, of 30 September 2016, that the service of Mr Garry Gordon Cooper DFC during the Vietnam War has been appropriately recognised, be affirmed.