



Australian Government

Defence Honours and Awards Appeals Tribunal

Hawkins and the Department of Defence [2016] DHAAT 39 (21 December 2016)

File Number(s)	2014/094
Re	Mr Richard Kenneth Hawkins Applicant
And	The Australian Army on behalf of Department of Defence Respondent
Tribunal	Mr M. Sullivan AO (Presiding Member) Mr G. Mowbray
Hearing Date	14 July 2016

DECISION

On 21 December 2016 the Tribunal recommended to the Minister that

- a. the decision by the Parliamentary Secretary for Defence of 6 February 2012 to refuse to recommend action to upgrade Private Richard Kenneth Hawkins' award for gallantry for his actions on 15 December 1970 at the Courtenay Rubber Plantation, Phuoc Tuy Province, South Vietnam, be set aside; and
- b. Private Richard Kenneth Hawkins be awarded the Medal for Gallantry for 'acts of gallantry in action in hazardous circumstances' on 15 December 1970 at the Courtenay Rubber Plantation, Phuoc Tuy Province, South Vietnam.

CATCHWORDS

DEFENCE HONOUR – *Military Medal – Mention in Despatches – Medal for Gallantry – South Vietnam – Phuoc Tuy Province – Courtenay Rubber Plantation – acts of gallantry – worthy of recognition*

LEGISLATION

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

Defence Force Regulations 1952 – Reg 93B Sch 3

Defence Regulation 2016 – s 85

Commonwealth of Australia Gazette No. S25 Gallantry Decorations Regulations, dated 4 February 1991

War Office Pamphlet on Military Honours and Awards 1960, WO 12922, dated July 1960

REASONS FOR DECISION

Introduction

1. The applicant, Mr Richard Hawkins, seeks review of a decision by the Parliamentary Secretary for Defence to refuse to recommend further action to upgrade his award for gallantry.
2. Mr Hawkins was a Private who was conscripted under the *National Service Act 1964* and serving as a machine gunner in 6 Platoon, B Company, 2nd Battalion, the Royal Australian Regiment (2 RAR), when it was engaged in a fire fight on the night of 15 December 1970 in Phuoc Tuy Province in South Vietnam.
3. For his actions on that night Mr Hawkins was awarded the Mention in Despatches (MID) recommended by his Commanding Officer (2 RAR), Lieutenant Colonel John Church on 1 February 1971. Mr Hawkins asserts that his Platoon Commander, Second Lieutenant Peter Gibson, recommended him for a Military Medal (MM).
4. In March 2014, Mr Hawkins applied to the Tribunal for a review of the decision of the Parliamentary Secretary to not recommend he be awarded the MM instead of the MID. In response Mr Hawkins was advised that the Tribunal required evidence of a refusal to recommend the higher honour by Defence or its officials.
5. In September 2014, the Tribunal was informed that Mr Hawkins had made an application in April 2014 to the Directorate of Honours and Awards in the Department of Defence (the Directorate) for the MM. Furthermore the Tribunal was provided with a letter dated 6 February 2012 from the Parliamentary Secretary for Defence, Senator the Hon David Feeney, to the Hon Peter Dutton MP, Mr Hawkins' Federal Member of Parliament, in response to an earlier request on 21 November 2011, denying Mr Hawkins the higher honour.¹ Having received this evidence of denial, the Tribunal accepted Mr Hawkins' application for review and Mr Hawkins completed the appropriate forms and sent them to the Tribunal.²

Tribunal Jurisdiction

6. Pursuant to s 110VB(1) of the *Defence Act 1903* (the Act) the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s 110V(1) and includes a decision made by a person within the Department of Defence or the Minister to refuse to recommend a person for an honour or award in response to an application. Regulation 93B of the *Defence Force Regulations 1952* defines a defence honour as being those awards set out in Part 1 of Schedule 3. Included in the defence honours set out in Part 1 is the MM.³
7. Mr Hawkins' request made through his MP, the Hon Peter Dutton, on 21 November 2011 constituted an application as defined in s 110V(1)(c) of the Defence Act. The Parliamentary Secretary's refusal of 6 February 2012 to take

¹ Letter Senator the Hon David Feeney to the Hon Peter Dutton MP dated 6 February 2012.

² Mr Hawkins' Application for Review of Decision and accompanying submission dated 25 October 2014.

³ 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.

further action to upgrade the award constituted a refusal to recommend Mr Hawkins for the MM. This refusal satisfied the requirements of s 110V(1)(a) and (b) of the Act.

8. Therefore the Tribunal has jurisdiction to review the decision in relation to this honour. In accordance with s 110VB(1) of the Act, as the matter under review is a defence honour, the Tribunal does not have the power to affirm or set aside the decision but may make recommendations regarding the decision to the Minister.

Conduct of the Review

9. In accordance with its *Procedural Rules 2011*, on 20 October 2014 the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Hawkins' application and requesting a report on the material questions of fact and the reasons for the decision made on Mr Hawkins' eligibility for the MM.⁴ The Tribunal also requested that the Secretary provide copies of documentation relevant to the reviewable decision and that he provide a copy of the relevant service record.

10. On 6 November 2015 the Director General Personnel – Army responded and included a review of Mr Hawkins' recognition prepared by the Australian Army History Unit (AAHU) (the Army Submission).⁵ The Director General's response concluded that:

*'... I am satisfied that there was no maladministration or failure in due process in relation to Mr Hawkins' recommendation for the MID. Mr Hawkins received the award for which he was recommended by the Commanding Officer of the 2nd Battalion, The Royal Australian Regiment. His recommendation accurately reflects his actions and it was processed correctly in accordance with policy and awarded in a timely manner. It is my view that the awarding of the MID be upheld.'*⁶

11. On 12 November 2015 the Tribunal sent the Army Submission to Mr Hawkins for comment. On 2 December 2015 Mr Hawkins provided the Tribunal with his comments.⁷

12. The Tribunal met on 12 May 2016 and considered the material from Mr Hawkins and the Army. The Tribunal confirmed the scope of the review, the decision under review, jurisdiction, and possible witnesses. It also determined that it would require some further research material before proceeding.

13. In accordance with the Tribunal's Procedural Rules the hearing into this matter was required to be conducted in public. As a consequence Mr Hawkins and representatives of the Department of Defence were invited to provide evidence at a hearing in Canberra on 14 July 2016. The Tribunal heard oral evidence from Mr Hawkins and three other persons who had prepared written statements in support of his submission, Mr Allan Farquhar, Mr Peter Gibson MC (by phone) and

⁴ Letter Chair of the Tribunal to the Secretary Department of Defence DHAAT/OUT/2014/1103, dated 20 October 2014.

⁵ Review of Recognition for 1735350 Private Richard Kenneth Hawkins, Attachment 1 to R23845032, dated October 2015.

⁶ Letter Director General Personnel – Army to the Tribunal, DGPERS-A/OUT/2015/R23840408, dated 6 November 2015.

⁷ Letter Mr Hawkins dated 2 December 2015 to the Tribunal received 9 December 2015.

Mr Dennis Pattle (by phone). Written statements were also received from Mr Alan Baglin, Mr Graham Hoffman and Mr Dennis Townsend. Ms Gillian Heard, Staff Officer Ceremonial - Army, and Major Phil Rutherford from the AAHU, presented evidence and submissions on behalf of the Department of Defence.

Private Richard Hawkins' Service Record

14. Richard Kenneth Hawkins was born on 26 September 1948 and conscripted under the *National Service Act 1964*, entering the Australian Army on 22 April 1969. Following training at the 3rd Training Battalion, Singleton, NSW he was posted to 2 RAR at Lavarack Barracks in Townsville, Queensland.⁸

15. On 15 May 1970, 2 RAR deployed to Nui Dat in Phuoc Tuy Province, South Vietnam, where it relieved 6 RAR and commenced the Battalion's second tour of duty. On arrival it was joined by two infantry companies from the Royal New Zealand Infantry Regiment and resumed the title ANZAC Battalion. Private Hawkins was at this time a machine gunner with number 9 Section, 6 Platoon, B Company (9 Sect 6 Pl B Coy).

16. On 3 December 1970 B Company under Major Graham Hoffman deployed north of Nui Dat where its mission was to conduct reconnaissance patrols, ambushes and security operations within its allocated area of operations. On 14 December 1970 B Company was moved further north where on 15 December 1970 the action that is the subject of this review took place.

17. On 23 December 1970 B Company returned to Nui Dat and commenced local defensive tasks. Private Hawkins continued to serve with B Company until 23 March 1971 when he returned to Australia in preparation for discharge from his national service obligations on 21 April 1971.

18. For his service during the Vietnam War, Private Hawkins was awarded the following honours and awards:

- Australian Active Service Medal 1945-75 with Clasp 'VIETNAM'
- Vietnam Medal
- Australian Defence Medal
- Anniversary of National Service 1951-72 Medal
- Republic of Vietnam Campaign Medal
- Republic of Vietnam Cross of Gallantry with Gold Star
- Mention in Despatches.

19. The MID was awarded on 16 December 1971.⁹

The Mention in Despatches Citation

20. The citation supporting Private Hawkins' nomination of 1 February 1971 for the MID states:

'... On 15th December, 1970, Private Hawkins was the machine gunner of an ambush patrol in the vicinity of the Courtenay Rubber Estate, Phuoc Tuy

⁸ Review of Recognition for 1735350 Private Richard Kenneth Hawkins, Attachment 1 to R23845032, dated October 2015.

⁹ *The London Gazette No. 45550* dated 21 December 1971

*Province. At 2100 hours the machine-gun group heard the movement of a group of approximately 20 enemy approaching the ambush position. The ambush was initiated when the machine gun group fired claymore mines and Private Hawkins fired a long burst of accurate fire. During the ensuing fire-fight, which lasted 45 minutes, Private Hawkins continued to engage, with short bursts, enemy movement in the contact area. His accuracy of fire caused heavy casualties to the enemy; it was later established that 10 enemy dead lay in an area from 15 metres to 120 metres from Private Hawkins' position and most of these were attributed to his effective fire. His calm response and reactions under the heavy enemy return fire, which wounded two Australians, were a steadying influence on the remainder of his patrol and reflect great credit on himself, his Regiment and the Australian Army.'*¹⁰

Other Honours Associated with 15 December 1970 Action

21. Three other members of 2 RAR were awarded honours arising out of their involvement in the action on 15 December 1970. They were:
- Lieutenant Colonel John Church, Commanding Officer 2 RAR, awarded the Distinguished Service Order for his total deployment in Vietnam which included the 15 December 1970 operation;
 - Second Lieutenant Peter Gibson, Commander 6 Platoon, awarded the Military Cross for his role during the 15 December 1970 action; and
 - Corporal Kenneth Johnston, Section Commander in charge of the machine gun group, awarded the Military Medal for his roles in an earlier operation in August 1970 and during the 15 December 1970 action.¹¹

The citations for each of these awards were before the Tribunal.

Eligibility Criteria for Military Medal and Mention in Despatches

22. Section F of the *Pamphlet on Military Honours and Awards* (WO 12922) dated July 1960 provides the description and conditions of the Imperial awards available during the Vietnam War.¹²

23. The MM was awarded to other ranks 'for a specific act of gallantry in the Field, or for a continuous display of bravery over a specified period of active operations'.

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

25. Paragraph 5 also provides that operational awards for service in a campaign were to be made on a scale based on the average strength of the force deployed. The normal scale was 1 in 250 for decorations and 1 in 150 for MID every six months.

¹⁰ Army Form W.3121, Recommendation for Honours or Awards: Private R.K. Hawkins dated 1 February 1971.

¹¹ File AWM119, 627, Parts 1 and 2

¹² War Office *Pamphlet on Military Honours and Awards 1960*, WO 12922, dated July 1960.

This operational scale, also known as the 'quota', was applied by the Australian Government during the Vietnam War for Army units.

Eligibility Criteria for Gallantry Decorations

26. The *Commonwealth of Australia Gazette (CAG) No S25* of 4 February 1991 records the creation by Letters Patent of Australian Gallantry Decorations which provide for recognition of members of the Defence Force and certain other persons who perform acts of gallantry in action.¹³ The criteria for these awards are set out in 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.¹⁴

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

Mr Hawkins' Evidence and Submissions

28. Mr Hawkins provided a written submission with his formal application to the Tribunal on 25 October 2014.¹⁵ He says that he was a M60 machine gunner with an ambush patrol of 10-12 men when they were attacked by an enemy force. As several enemy had observed them as they were preparing for the night ambush, they knew that 'the enemy was coming on that night'. The enemy:

'definitely did not just walk into an ambush. They knew my exact location and my guess is they had earlier counted the rows of rubber trees to help them locate my position. Their tactics were to take out the machine gun as quickly as possible and at the same time concentrate their attack on a less well armed section of the defensive perimeter.'

29. Mr Hawkins argued that it was not correct, as stated in the citation, that the Australian patrol initiated the ambush as the enemy took the first action by throwing hand grenades and firing RPG's.¹⁶ In the fire fight which followed they were very close, 'less than a row of rubber trees away'. Mr Hawkins' section commander and section 2IC were both wounded:

'The enemy continued to attack my machine gun position from very close range with AK 47's and other weapons [I estimate some were as close as 5 meters from me at times] for around 45 minutes. During this time heavy enemy fire was directed at me and the rubber tree I was beside was absolutely riddled with bullets and rubber sap was splattered everywhere. We called in supporting artillery fire and flares. ... the enemy force was much stronger than

¹³ *Commonwealth of Australia Gazette No. S25* dated 4 February 1991.

¹⁴ *Ibid*

¹⁵ Attachment to Mr Hawkins' Application for Review of Decision dated 25 October 2014.

¹⁶ RPG – a Russian designed anti-tank launcher.

we thought ... we collected the mutilated bodies of 9 enemy ... another body was found the next morning.'

30. Mr Hawkins said that his Platoon Commander told him 'that without the calm, steady reaction of myself and my No 2 machine gunner under heavy enemy fire, after casualties had been sustained around us, it was highly likely that our small and outnumbered patrol would have been overrun.' Furthermore the Platoon Commander was 'sure that he recommended me for a Military Medal and that it must have been downgraded at Battalion level by the Battalion Commander.' Mr Hawkins asserted that this may have been due to the quota policy and the fact that he was a National Serviceman with the rank of Private. He referred to the higher awards made to his Battalion, Platoon and Section Commanders.

31. Mr Hawkins concluded:

'I fail to see how a person who singlehandedly, personally, and was directly responsible for repelling the number of enemy attacking that night and possibly/probably saving the lives of all in our patrol could receive the lowest award that was given on that occasion. It is well documented that the machine gun was responsible for the outcome on that night.'

32. In a letter dated 2 December 2015 in response to the Army Submission, Mr Hawkins reiterated his claim that the fire fight was initiated by an enemy attack on the Australian patrol with a grenade landing behind him, following which the patrol returned fire and fired the claymores.¹⁷ He highlighted the 'huge difference between springing an ambush and waiting on the darkest of nights knowing an attack was imminent.' He queried how well informed the Battalion Commander, Lieutenant Colonel Church, was about the incident, considering what he had written in his book *Second to None*.¹⁸

33. Mr Hawkins' evidence at the hearing on 14 July 2016 did not add substantively to that contained in his submissions. He confirmed that the enemy knew exactly where the Australian troops were located, in particular his position as the machine gunner. The enemy had initiated the fire fight on a pitch black night fought at very close range for almost an hour. He again questioned how much Lieutenant Colonel Church knew about it. He queried what had happened to the 'After Action Reports' which they had all prepared following the incident. They were not in the material provided by Defence and appeared to have been lost.

34. At hearing, Mr Hawkins stated that there had been no conversation at that time with his Platoon Commander about a recommendation for the MM. Mr Hawkins had been informed of this some 30 years later.

35. In his first submission Mr Hawkins said that a soldier was more likely to receive an award if he were a Regular NCO (non-commissioned officer) as opposed to a National Service Private. In a further email Mr Hawkins submitted that this was illustrated by the upgrading of the award for Corporal Ross Kenny from a recommendation by the Battalion Commander for a MID to a MM.¹⁹ There was no indication in the Kenny citation that Corporal Kenny who was a '2 tour regular

¹⁷ Letter from Mr Hawkins to the Tribunal dated 2 December 2015.

¹⁸ See reference to Lieutenant Colonel Church *Second to None* at p106, received under cover of Mr Hawkins' 2 December 2015 letter to the Tribunal.

¹⁹ Mr Hawkins' email to the Tribunal dated 18 July 2016.

soldier' had acted above and beyond the job expected of him, something required for the higher award.

Mr Peter Gibson MC's Evidence

36. Second Lieutenant Peter Neil Gibson was the Commander of 6 Platoon responsible for the ambush patrol at the Courtenay Rubber Plantation on the evening of 15 December 1970. He provided the Tribunal with a Statutory Declaration²⁰ and gave oral evidence by phone. In his Statutory Declaration he stated:

- The ambush patrol consisted of 14 soldiers with Private Hawkins carrying the sole M60 machine gun;
- He sited the M60 and banks of Claymore mines covering the approach from the west which he judged to be the most likely enemy approach route;
- From about 8.30pm whispering and shuffling of leaves were heard indicating enemy movement towards the patrol's position;
- At 9.10pm the enemy initiated a major fire fight with grenades and AK47 fire;
- An engagement of approximately 45 minutes ensued with the enemy shifting positions and firing from both the western and southern flanks;
- In the absence of any NCO in charge of his group – his two immediate superiors had been seriously wounded – Private Hawkins continued to engage the enemy with calm, methodical and accurately directed bursts of fire, ably assisted by his No 2 Private Townsend;
- Until the enemy disengaged following the approach of three armoured personnel carriers, Private Hawkins continued to engage the enemy, 'and his calm, accurate and steady action prevented the enemy from inflicting further casualties, and over-running our position';
- Ten enemy bodies were recovered, most located 10 to 25 metres from Private Hawkins' position;
- The ambush patrol had been attacked by a larger enemy force and had succeeded in defeating that force; and
- Subsequently, he recommended Private Hawkins for a MM but can not locate platoon to company and company to battalion documentation.

37. Mr Gibson concluded:

'The success of this action and the survival of the patrol were in large part due to the actions of Private Hawkins for whom the award of a Military Medal was fully justified.'

38. In his oral evidence Mr Gibson said:

²⁰ Peter Neil Gibson MC Statutory Declaration dated 16 September 2015.

- The size of the Australian patrol was not a full platoon, but in fact less than half a platoon with significantly less fire power of about 12 men and only one machine gun;
- He had divided the patrol to establish two ambush positions on the approach to a house;
- The enemy of at least 20 men approached the patrol through the rubber about an hour before they commenced the action at close range;
- The fact there was only one Australian machine gun was a key point;
- This machine gun was instrumental in saving the patrol from being overrun;
- The particular operator of the machine gun was critical as he was under extreme pressure in continuously engaging observed enemy fire at very close range;
- As a consequence he recommended Private Hawkins for a MM;
- He must have made a written recommendation to the Company Commander Major Hoffman with the citation, although he could not now find any documentary evidence;
- The citation would have originated with him, but there were a number changes to it when the award was announced;
- Any 'After Action Reports' would have been attached to his report to Major Hoffman;
- He had had no conversation about it with the Battalion Commander Lieutenant Colonel Church who wrote 'his book only on records, not by talking to people';
- Lieutenant Gibson noted that his recommendation of a Distinguished Conduct Medal for Corporal Johnston had also been downgraded to a MM;
- He had clearly made a distinction between a DCM and a MM;
- Apart from posthumous awards, MIDs were for actions 'not under fire';
- Hawkins' actions were much more significant than those of a 'quartermaster', being under huge pressure in combat; and
- He strongly supported attempts to have the original recommendation for a MM for Private Hawkins stand.

39. Following the hearing the Tribunal wrote to Mr Gibson requesting that he examine the official citation in detail and indicate in which respects he disagreed with

it and what corrections he would make. On 24 August 2016 Mr Gibson responded attaching a revised citation ‘which corrects the inaccuracies in his MID citation’.^{21 22}

40. Mr Gibson said that he had examined the citation and

‘have compared the “facts” as outlined in it with the contemporaneous records of the time, supplemented by my own clear recollections and those of others who were present. I have also reviewed descriptions of the engagement written well after the event by people who were not present, but have not spoken with me or others directly involved and have accordingly reported inaccurately.

‘My summary conclusion and response is that the citation is inaccurate in a number of critical respects. Because of these inaccuracies, it does not appropriately reflect the circumstances in the field, or more importantly, the key role played by Mr Hawkins throughout the engagement.’

41. Mr Gibson stated that it was incorrect to suggest that ‘the enemy simply walked into an ambush and were engaged by our patrol’ in the normal way and that ‘the tactical advantage was always with the Australian patrol.’ The enemy had observed the patrol such that the Australian position appeared to have been compromised. Mr Gibson said ‘the late hour and imminent last light meant that I had no option other than to persist with the task (and this is what I was ordered to do).’ He stated:

- At around 2030 hours he ordered the commander of the gun group to hold fire until the latest possible moment;
- The enemy retained an initial tactical advantage ‘as demonstrated by *their initiation* of a major fire-fight at approximately 2110 hours’; (emphasis added)
- The initial attack was directed ‘specifically at the machine gun position of Mr Hawkins’, with serious wounding of gun group commander and the only other NCO;
- Without their support Mr Hawkins was required to respond to changes in the direction of fire from the enemy who were now attempting to out flank and attack from the south and south west;
- Mr Hawkins ‘continued to provide the mainstay of our response, with calm, effective and accurate fire, under heavy enemy attack’;
- The relevant log entries made it clear that the enemy attacked the Australian position, not that the Australians ambushed the enemy; and
- The Australians were fighting ‘a fierce defensive battle against a numerically superior force without the tactical advantage of surprise’ highlighting ‘the fundamental importance of Mr Hawkins’ actions’.

²¹ Letter Mr Peter Gibson MC dated 24 August 2016 to the Tribunal.

²² The revised (August 2016) citation prepared by Mr Gibson is at Attachment A. This is consistent with the findings of fact made by the Tribunal in this decision.

42. Mr Gibson contested the Army's assertion that Lieutenant Colonel Church would have been well informed of Mr Hawkins' actions. Lieutenant Colonel Church spoke with Mr Gibson very briefly once on 16 December 1970 and never spoke to him again about this matter. Furthermore the citation Lieutenant Colonel Church signed was factually wrong.

43. Army's assertion that how the contact was initiated had 'minimal, if any, bearing' on the recommendation for Mr Hawkins:

'at best ignores or otherwise completely understates the major difference between the initiation of an ambush and the defensive response to an enemy attack at night on a compromised position. The tactical differences between these two circumstances are very great, and underline the critical importance of a sole machine gunner in the second defensive scenario.'

44. Mr Gibson's conclusion in this letter was that Mr Hawkins' actions:

'were conspicuous in their gallantry under heavy enemy fire. The circumstances were extremely hazardous. I believe his actions merited the award to him of a Military Medal then and now justify the upgrading of his Mention in Despatches to the Medal for Gallantry.'

45. Mr Gibson's August 2016 suggested revised citation for Mr Hawkins is at Attachment A. This is consistent with the findings of fact made by the Tribunal in this decision.

Mr Allan Farquhar's Evidence

46. Private Allan James Farquhar was a member of the ambush patrol at the Courtenay Rubber Plantation on the evening of 15 December 1970. He provided the Tribunal with a Statutory Declaration²³ and accompanied Mr Hawkins to the hearing at which he also gave oral evidence. In his Statutory Declaration he stated that he was approximately 5 metres to the right of the machine gun group at about 9pm when a large enemy force attacked pinning them in cross fire. He said:

'I believe that if it was not for the calm steel nerve of Private (R.K.Hawkins) machine gunner and his extremely accurate shooting we most surely would have been over run and killed. I believe the rest of us in that ambush owe our lives to Pte. Hawkins and I like the others that were there believe Pte Hawkins should have received a Military Medal or higher as his actions saved our lives that night.'

47. Mr Farquhar reiterated these views at the hearing and supported Mr Hawkins' evidence on various specific issues. He emphasised that he had no doubt that Mr Hawkins' actions played a pivotal role in saving their lives, preventing them from being wiped out – his expertise, calmness, deadly accuracy, all under pressure with both the section head and his 2IC wounded and out of action.

Mr Dennis Pattle's Evidence

48. Private Dennis Reginald Pattle was another member of the ambush patrol at the Courtenay Rubber Plantation on the evening of 15 December 1970. He provided

²³ Allan James Farquhar Statutory Declaration dated 24 June.

the Tribunal with a Statutory Declaration²⁴ and gave oral evidence by phone. In his Statutory Declaration he stated:

- The patrol was split into groups of three in a triangular formation with the three man machine gun group at the western apex of the triangle covering the track which converged from the west;
- He was slightly higher and a few metres to the south east of Private Hawkins;
- Around 8pm there were significant enemy movements towards the patrol's positions;
- About 9.15pm the enemy with a numerically superior force launched a major assault on Private Hawkins' position with automatic weapons and grenades;
- The enemy fire was very intense, appeared to be close and mainly directed at the gun group;
- He moved closer to Hawkins' position and spoke to Hawkins on a number of occasions about the enemy's movements;
- The enemy was sparing no effort to destroy the gun group and it was Private Hawkins' 'calm and methodical actions/reactions, and Peter Gibson's leadership, that ultimately prevented the enemy from overrunning our positions';
- Contact with the enemy lasted about 40 to 50 minutes; and
- Private Hawkins assumed a leadership role because of the wounding of the section leader.

49. Mr Pattle said that he did not think that Mr Hawkins was properly recognised for his actions. In particular, he felt that a failure to recognise the peculiarities of night combat 'which can reduce and distort ... differences in individual perception of a particular incident' led to a failure 'to properly identify the crucial role played by Hawkins (and his assistant machine gunner Townsend) in preventing our position being overrun by a very aggressive larger enemy force.' He should be awarded a decoration:

'more consistent with the great courage, personal initiative, focused aggression and deadly determination he displayed that night. ... he was also forced to assume overall operational responsibility for the gun group... Further, despite being the focus of a determined enemy attack, in an exposed position, I have absolutely no doubt that Hawkins broke the enemy's momentum during their initial assault and, enabled us to maintain the tactical advantage.'

50. In Mr Pattle's oral evidence he reaffirmed that in his Statutory Declaration. In particular, he asserted that the fire fight had been started by the enemy. The enemy's

²⁴ Dennis Reginald Pattle Statutory Declaration dated 3 July 2016.

efforts were directed at destroying the machine gun with the volume of fire concentrated on Private Hawkins' position which not being dug in was very exposed. Private Hawkins took full responsibility for the gun group as his section leaders had been wounded and despite the pressure on him continued to function competently, with 'absolute command'. He was pivotal to the survival of members of the patrol which was very close to being overrun.

Mr Alan Baglin's Evidence

51. Private Alan Baglin was also a member of the ambush patrol and provided a statement to the Tribunal.²⁵ This gives a list of the 12 soldiers involved and sets out their rough positions during the contact. Mr Baglin makes the following points:

- The contact was initiated by a large explosion (grenade?), gunfire and flares;
- He spent most of the contact helping Lance Corporal Poulton who had been injured;
- He could hear many explosions and gun fire coming from Hawkins, Johnston and Townsend's position;
- He was thankful that they had such competent people on the gun, with Private Hawkins showing great courage and level headedness; and
- Private Hawkins did his job 'brilliantly on that night'.

Mr Dennis Townsend's Evidence

52. Private Dennis Townsend was the number two on the machine gun on the ambush patrol whose job was to position the claymore mines and to lay out ammunition for the gun. In his statement to the Tribunal he said:²⁶

- The contact was initiated when he exploded the claymores at virtually the same time as a grenade landed about a metre behind them;
- The enemy numbered twenty or thirty North Vietnamese regular soldiers;
- The amount of fire directed back at them was 'incredible';
- The incident lasted thirty minutes or more;
- Although Corporal Johnston was wounded early, Private Townsend was not aware that Private Hawkins took on any extra responsibility because of this; and
- Concluding '*I was observing his actions all night he was incredible not only that night but all his tour he was a great soldier*'.

²⁵ Statement Alan Baglin *Account of a contact in Vietnam in 1970* undated.

²⁶ Email statement Dennis Townsend dated 30 July 2016.

Mr Graham Hoffman's Evidence

53. Major Graham Hoffman was the Officer Commanding B Company 2 RAR at the time of the action and until the unit returned to Australia. In an email to the Tribunal²⁷ he said that although he could remember the night of the action, he could not recall playing any part in making any recommendation for an award for Mr Hawkins. No consideration was given to awards until an instruction was received from Battalion Headquarters requesting submissions between late February and early April 1971. He does not recall discussing any award with any member of the Company.

The Army Submission

54. **Overview of Incident.** Attachment 1 to the Army Submission²⁸ provides an overview of the incident on 15 December 1970 gleaned from historical records, including:

- As part of its patrol task on 15 December 1970 the platoon was to set up and occupy an ambush position close to Route 2 in the Courtenay Rubber Plantation covering a number of tracks and buildings known to be used by enemy personnel;
- During the evening soldiers laying out claymore mines detected a number of persons north of the Australians moving from west to east;
- After the ambush was set movement and lights were seen for about an hour until around 2100 hours when a large number of enemy were observed moving cautiously towards the ambush position;
- Although it is unclear who initiated the fighting it was in front of Private Hawkins' M60 machine gun;
- The After Action Report states that contact was initiated by Claymores and M60 with VC return fire with RPGs and AK47;
- Nevertheless Private Hawkins' contention that the action was initiated by the enemy is supported by radio logs and other official reports; and
- 10 enemy were killed and two Australians wounded.

55. **Chain of Command for Recommendations.** The Army Submission discusses the procedures operating for honours and awards in 1971 and concludes that in accordance with the *Pamphlet on Military Honours and Awards 1960* it was for the Battalion Commander to make formal recommendations.²⁹ While Lieutenant Gibson may have recommended the MM for Mr Hawkins to Lieutenant Colonel Church, Lieutenant Colonel Church was the ultimate authority responsible for initiating any such recommendation. The Submission states:

²⁷ Email statement Graham Hoffman dated 6 July 2016.

²⁸ Letter Director General Personnel – Army to the Tribunal, DGPERS-A/OUT/2015/R23840408, dated 6 November 2015.

²⁹ War Office *Pamphlet on Military Honours and Awards 1960*, WO 12922, dated July 1960

‘The AF-W 3121 for the MID for Mr Hawkins clearly shows that the recommendation was processed through the appropriate chain of command in accordance with the policy and accepted practices of the time.’

56. The Army Submission also addressed a number of Mr Hawkins’ contentions.

57. **Recommendation Downgraded by 2 RAR Commanding Officer.** Army asserts that even if Lieutenant Gibson had put Mr Hawkins forward for a MM, the proper authority for initiating such awards was the Commanding Officer, Lieutenant Colonel Church. He had recommended a MID and ‘it can be reasonably concluded that LTCOL Church was well informed of Mr Hawkins actions and chose to recommend him for the MID.’ In Army’s view the citation put forward by Lieutenant Colonel Church ‘accurately reflects Mr Gibson’s account of PTE Hawkins’ actions’.

58. **Recommendation Downgraded due to Quotas and Preference for Regular Soldiers or on Rank.** Neither of the relevant documents giving guidance on honours and awards provides any support for Mr Hawkins’ contention that there was discrimination between regular servicemen and those undertaking national service, or on the basis of rank, save for that described in Royal Warrants.

59. Army also states that there is no evidence that Mr Hawkins’ award was influenced by the quota imposed during this period. Although it is unclear, it appears that the number of honours approved between January and June 1971 was under the approved quota.

60. **Honours Awarded to Others.** Mr Hawkins contended that the Commanding Officer 2 RAR and his platoon and section commanders all received more significant awards relying on Mr Hawkins’ actions on 15 December 1970. However in its submission Army states that an examination of the AF-W3121’s for these awards shows that Lieutenant Colonel Church was awarded for his role throughout the entire deployment of 2 RAR, not any specific action, and Corporal Johnston’s was for an operation on 27 August as well as that on 15 December. Lieutenant Gibson’s Military Cross was for his actions on the night of 15 December.

61. **Initiation of 15 December 1970 Incident.** Mr Hawkins’ description of the events leading up to and during the actual contact on the night of 15 December 1970 in some respects accords with, and in other respects differs from, that provided in both official and contemporary records. The Army Submission annexed a paper prepared by the AAHU which drew on records kept by commanders at 2 RAR, HQ 1ATF and HQ AFV, as well as unofficial histories of deployments in Vietnam.³⁰ This paper found:

- The initial report submitted immediately after the contact said that the Australian patrol ‘initiated with claymores M60 en eng with 1 RPG and AK47’;
- However later communications between B Company and 2 RAR Command Post reported that it had been started by the enemy;

³⁰ Annex D to Review of Recognition for 1735350 Private Richard Kenneth Hawkins, Attachment 1 to R23845032, dated October 2015, entitled *B Company Contact on the Evening of 15 December 1970*.

- Further updates by B Company confirmed this, although 2 RAR reported to 1ATF that it was ‘initiated with claymores and M16’ (M16 later revised to M60); and
- Reports submitted by HQ 1ATF repeated that the ambush patrol had initiated the fire fight, as did a semi-official history of the RAR in Vietnam.³¹

62. The Army’s review of official records and contemporary reports shows that communications at various levels differed, with a lack of agreement on how and by whom the action was initiated. Army concludes whether the contact was initiated by the Australians or the enemy remains inconclusive. Importantly, Army states:

‘However, the recommendation for PTE Hawkins does not focus on how contact was initiated but on his actions once contact had begun. It could be reasonably concluded that regardless of how the contact was initiated, it had minimal if any, bearing on the recommendation for Mr Hawkins.’

63. **Army Submission Conclusions.** Army concludes that its researcher could find no evidence of a failure in due process or maladministration that would warrant reconsideration of the recommendation by Army. The recommendation for Mr Hawkins was ‘compiled, considered and submitted in accordance with extant policies and practices of the time.’

64. **Army Oral Evidence and Submissions.** This was provided by Ms Gillian Heard, Staff Officer Ceremonial - Army, and Major Phil Rutherford from the AAHU.

65. Ms Heard asserted that there had been no maladministration or any compelling new evidence. Ms Heard went on to state that Lieutenant Gibson’s recommendation was only to his Battalion Commander who had the responsibility for making a formal recommendation, something he did. There were lost documents according to Ms Heard, but she stated that even if this amounted to maladministration today, it was not so for the period in question.

66. Major Rutherford agreed that the records were incomplete and some inaccurate, with differences in information conveyed to various people. There was a lack of clarity also about such things as why there was only one machine gun, the enemy numbers and who initiated the incident. He reiterated however that the question of who initiated the action was irrelevant.

67. He said that much of what happened with the gun was instinctive, but self discipline would prevent a soldier firing at first.

[REDACTED]

³¹ Fairhead, Lieutenant Colonel (Retd) F. *A Duty Done: A summary of operations by the Royal Australian Regiment in the Vietnam War 1965-1972*. Royal Australian Regiment Association SA Inc, Linden Park. SA.

Tribunal Consideration – Findings of Fact on the Incident

68. Much of the evidence on the night of 15 December 1970 is uncontested. One important point which is in dispute, or unclear according to Army, is who initiated the fire fight. It is Army's view however that this is irrelevant to the decision on the appropriate level of award for Mr Hawkins.

69. **Initiation of Fire Fight.** Mr Hawkins contention is that although the Australian patrol was setting up an ambush it was the enemy that took the first action by throwing hand grenades and firing RPG's. The enemy attack with AK47's was then concentrated on Mr Hawkins' machine gun position from close range seeking to wipe it out. Mr Hawkins is supported in this recollection by all of his colleagues who gave evidence, apart from Mr Townsend who said that the grenade landed at virtually the same time as he exploded the claymores.

70. Army examined the official records and contemporary reports closely on this point and found differences and discrepancies between the various sources. It concluded that whether the contact was initiated by the Australians or the enemy 'is inconclusive'.

71. On the evidence the Tribunal is comfortably satisfied that it was the enemy who commenced the contact by a grenade landing behind and close to Mr Hawkins' gun group. Virtually all the first hand evidence, although obviously very dated, supports this. Army's evidence is inconclusive and a number of its reports clearly repeat what had been recorded in earlier documents.

72. **Recommendation Downgraded due to Quotas and Preference for Regular Soldiers or on Rank.** Mr Hawkins' submission that he was discriminated against due to the quota system and/or because he was national serviceman is unsupported by the evidence. Neither of the relevant documents providing guidance on honours and awards helps Mr Hawkins' contention. Furthermore, in considering quotas it should be noted that Mr Hawkins was placed number 18 out of 35 on the priority list for MID awards for January to June 1971.³²

73. **Material Findings of Fact.** Having reviewed all the evidence, the Tribunal makes the following findings:

- On the evening of 15 December 1970 6 Platoon was tasked with setting up and occupying an ambush position in the Courtenay Rubber Plantation in Phuoc Tuy Province in South Vietnam;
- The size of the Australian patrol was about 12 men, less than half a full platoon, with only one machine gun, an M60;
- The machine group consisted of the Section Commander, Corporal Johnston, Private Hawkins and the number two on the machine gun, Private Townsend;
- Lieutenant Gibson sited the ambush to cover an approach from the west;

³² Extracts from File: AWM119, 627 *Parts 1 and 2, Operational Awards Vietnam List 14*, received under cover of the Army Submission.

- The night was pitch black;
- A number of the enemy had observed the patrol preparing for the night ambush, such that they knew precisely the location of the Australians;
- This consequently conferred on the enemy an initial tactical advantage;
- Despite the patrol's position having been compromised, Lieutenant Gibson was ordered to persist with the task, something he felt was the only option given the late hour and failing light;
- The patrol came under heavy attack at approximately 2100 hours initiated by an enemy of more than 20 men at close range;
- This attack was specifically concentrated on the machine gun position, aiming to take it out, resulting in serious wounding to the Section Commander and the other NCO;
- Both NCOs played no further part in the action, contrary to one second hand report in a citation before the Tribunal;
- The gun group and other members of the patrol returned fire and set off the claymore mines;
- Private Hawkins who assumed leadership of his group after the two NCO's had been injured, responded to changing fire directions as the enemy were attacking from the south and south-west;
- The fire fight continued for approximately 45 minutes with the enemy probing the patrol's flanks;
- Private Hawkins as the sole machine gunner provided the mainstay of the Australian response with calm, measured, effective and accurate fire under heavy enemy pressure; and
- Ten enemy were later found dead in an area from 15 to 120 metres in front of Private Hawkins' position, most attributable to his effective fire.

Tribunal Consideration – Appropriate Level of Honour

74. Mr Hawkins was awarded a MID for his conduct on 15 December 1970, the eligibility criterion for which was 'an act of bravery or for continuous good work over a long period'. An MID may be 'awarded for either gallant or distinguished service'.

75. There can be no doubt that on the evidence before the Tribunal Mr Hawkins' actions on that night made him eminently qualified for such an award.

76. The question however is whether he should have received the higher honour of a MM as Mr Gibson, his Platoon Commander, believes. The MM was a Level 3 Imperial gallantry award which is no longer available under the Australian system of honours and awards. The Medal for Gallantry (MG) is the appropriate Level 3 award under the Australian gallantry awards. The MG is given for:

'acts of gallantry in action in hazardous circumstances'.

77. There are a number of features of the 15 December 1970 action and Mr Hawkins' conduct during it which have been highlighted in this review which were not appreciated or given sufficient weight at the time of his MID award, including:

- The fire fight was initiated by the enemy;
- There was no ambush by the Australian patrol;
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED];
- Significant increased pressure was placed on Mr Hawkins following the wounding and incapacity of both his Section Commander – commander of the gun group – and the other Section NCO; and
- The Battalion Commander who made the MID recommendation had limited knowledge of the incident.

78. The Army submission contended that how the contact was initiated had 'minimal if any, bearing on the recommendation for Mr Hawkins.' This was strongly contested by Mr Hawkins and his colleagues:

'This statement (about minimal bearing of who initiated fire fight) could only be made by someone who has never found themselves in a similar situation. Trust me, there is a huge difference between springing an ambush and waiting on the darkest of nights knowing an attack was imminent'^{33 34}

79. The Tribunal agrees with Mr Hawkins that this is of importance. [REDACTED]

80. There is no doubt that Mr Hawkins' actions were *in hazardous circumstances*, in fact extremely so. Did he display *acts of gallantry*? Gallantry is defined as *dashing courage; heroic bravery*.³⁵ This involves something beyond what would

³³ Letter Mr Hawkins dated 2 December 2015 to the Tribunal received 9 December 2015.

³⁴ See also Mr Gibson's comment quoted at para 43 above.

³⁵ Macquarie Dictionary, Revised Third Edition 2001.

normally be expected of a person in the position, something special. In Mr Hawkins' case the special circumstances included:

- The attack was initiated by the enemy and not an ambush as planned, providing the enemy with a tactical advantage;
- The Australian patrol therefore lost the tactical advantage of surprise associated with an ambush;
- The enemy had a significantly superior force advancing from an unexpected direction;
- The Australian patrol was seriously undermanned with only about half a platoon;
- Mr Hawkins and his M60 machine gun became the central focus of the attack, with the enemy concentrating on taking it out;
- He had the only machine gun, the direction of which he had to reposition, and which jammed on one occasion during the contact;
- As both his NCO's had been wounded, he took on extra responsibilities, under his Platoon commander directing operations, providing 'a steadying influence on the remainder of his patrol'; and
- He was described by his colleagues as having played a 'crucial' and 'pivotal' role in preventing the patrol being overrun and in saving their lives.

81. It is also clear to the Tribunal that the engagement was regarded by the authorities at the time as exceptional with no less than four high honours being awarded. Mr Hawkins' role was critical and central. Had he succumbed the platoon would have been decimated. Members of his patrol, as some reiterated in evidence, very likely owe their lives to him.

82. The Tribunal is of the view that Mr Hawkins made an outstanding and crucial contribution to the defeat of the enemy and the safety of the other members of his patrol on the night of 15 December 1970. The circumstances were extremely hazardous, and without his calm, measured and effective response the Australian patrol very likely would have been overrun.

83. The Tribunal is satisfied that Mr Hawkins' actions at the Courtenay Rubber Plantation on 15 December 1970 amount to 'acts of gallantry in action in hazardous circumstances'. Mr Hawkins' actions should be recognised by the Medal for Gallantry which is the appropriate award for his bravery, the Military Medal no longer being available. Should this be accepted, it is expected that the appropriate authority will seek return of the MID awarded to Mr Hawkins.

TRIBUNAL DECISION

84. The Tribunal recommends to the Minister that:

- a. the decision by the Parliamentary Secretary for Defence of 6 February 2012 to refuse to recommend action to upgrade Private Richard Kenneth Hawkins' award for gallantry for his actions on 15 December 1970 at the Courtenay Rubber Plantation, Phuoc Tuy Province, South Vietnam, be set aside; and
- b. Private Richard Kenneth Hawkins be awarded the Medal for Gallantry for 'acts of gallantry in action in hazardous circumstances' on 15 December 1970 at the Courtenay Rubber Plantation, Phuoc Tuy Province, South Vietnam.

REVISED RECOMMENDATION

(from P N Gibson MC, August 2016)

MEDAL FOR GALLANTRY

1735350 PRIVATE RICHARD KENNETH HAWKINS

Private Richard Kenneth Hawkins was called up for National Service in the Australian Army on 23 April 1969 and was allotted to the Royal Australian Infantry. He joined the 2nd Battalion, The Royal Australian Regiment in September 1969 and arrived with the Battalion in South Vietnam in May 1970.

On 15 December 1970 Private Hawkins was the sole machine gunner in an ambush patrol in the Courtenay Rubber Plantation in Phuoc Tuy Province. From approximately 2000 hours members of the patrol heard increasing signs of movement in the rubber. They believed a group of enemy was moving with stealth towards their position, which members of the patrol believed the enemy had observed before last light. Under orders to hold fire until the last possible moment, the patrol came under attack at 2110 hours when the enemy launched grenades and heavy AK47 fire targeting principally the machine gun group of which Private Hawkins formed part. The gun group and other members of the patrol immediately fired claymore mines and returned fire, with Private Hawkins now leading the gun group after his section commander was seriously wounded in the initial engagement.

Private Hawkins continued to engage, with short bursts, enemy movement to the front and flank of his position, notwithstanding heavy and targeted return fire. The ensuing fire-fight, which lasted 45 minutes, only ceased when the enemy withdrew on the approach of armoured personnel carriers called in by the patrol commander to reinforce the position and evacuate the wounded. Ten enemy were subsequently found dead in an area from 15 metres to 120 metres in front of Private Hawkins' position, most of them attributable to his effective fire. He assumed leadership of his section and his calm and measured responses, under great pressure and heavy fire, were a steadying influence on the rest of the patrol and enabled it to defeat a larger enemy force on the battlefield. Private Hawkins' sustained gallantry in action in extremely hazardous circumstances reflected great credit on himself, his Battalion and the Australian Army.