



Australian Government

Defence Honours and Awards Appeals Tribunal

██████████ and the Department of Defence [2017] DHAAT 001 (10 January 2017)

File Number(s) 2015/042

Re **Major** ██████████
Applicant

And **The Australian Army** on behalf of the **Department of
Defence**
Respondent

Tribunal Mr Mark Sullivan, AO (Presiding Member)
Brigadier Mark Bornholt, AM (Retd)
The Hon Peter Lindsay, OAM

Hearing Date 8 December 2016

DECISION

On 10 January 2017 the Tribunal decided to recommend to the Minister that the decision by the Chief of Army that no further action be taken to seek additional recognition for Major ██████████ for his service with the Australian Army Training Team Vietnam in 1970-71 be affirmed.

CATCHWORDS

DEFENCE HONOUR – *Foreign Awards – AATTV – US Bronze Star – Military Medal – Gallantry Decorations – Vietnam*

LEGISLATION

Defence Act 1903 – ss 110V(1), 110VA, and 110VB(1)
Defence Force Regulations 1952 – Reg 93B Sch 3
Commonwealth of Australia Gazette No. S25 Gallantry Decorations Regulations
dated 4 February 1991

REASONS FOR DECISION

Introduction

1. The applicant, Major [REDACTED] seeks review of a decision by the Chief of Army (CA) that no further action be taken to seek additional recognition for his service with the Australian Army Training Team Vietnam (AATTV) in 1970-71.¹ Major [REDACTED] was awarded the United States Bronze Star Medal for Valour with V Device (the Bronze Star) and seeks that this award be considered 'at the Military Medal (MM) level'.
2. On 9 November 2008, Major [REDACTED] e-mailed the Parliamentary Secretary for Defence Support (the Parliamentary Secretary) seeking Government investigation of the possibility of awarding equivalent Australian medals to soldiers who were awarded foreign gallantry medals for their service in Vietnam.² In 2011 Major [REDACTED] made a submission to the Tribunal's *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour* (the Valour Inquiry) pressing this assertion and quoting his own service as an example.³
3. On 14 March 2013 the Australian Government referred Major [REDACTED] Valour Inquiry submission to the CA through the Chief of the Defence Force for consideration. In 2014 Army undertook an individual review of Major [REDACTED] submission.⁴ Army concluded that 'in the absence of new authoritative and compelling information or evidence of maladministration, Army will not be pursuing recognition for Major [REDACTED]'. This decision was agreed by the Parliamentary Secretary on 8 February 2015.⁵ The decision was communicated to Major [REDACTED] by CA on 5 May 2015.⁶
4. On 17 November 2015 Major [REDACTED] made application to the Tribunal for review of the CA decision and confirmed that he was seeking that the citation for the Bronze Star be used to consider his eligibility for the MM.⁷

Tribunal Jurisdiction

5. Pursuant to s110VB(1) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence or the Minister to refuse to recommend a person for an honour or award in response to an application. Regulation 93B of the *Defence Force Regulations 1952* defines a

¹ CA OCA/OUT/2015/R21045044 to Major [REDACTED] dated 5 May 2015

² ASPSS /OUT/2008/1002 to Major [REDACTED] dated 15 December 2008

³ Submission [REDACTED] to the Valour Inquiry by Major [REDACTED] dated 18 April 2011

⁴ Army Review of Submission [REDACTED] – Major [REDACTED] – Folio #27

⁵ Parliamentary Secretary to the Minister for Defence letter to the Tribunal dated 8 February 2015

⁶ CA OCA/OUT/2015/R21045044 to Major [REDACTED] dated 5 May 2015

⁷ Major [REDACTED] Application for Review of Decision dated 17 November 2015

defence honour as being those awards set out in Part 1 of Schedule 3.⁸ Included in the defence honours set out in Part 1 is the MM.

6. The Tribunal was satisfied that Major [REDACTED] submission to the Valour Inquiry constituted an application as defined in s110V(1)(c) of the Defence Act. The Tribunal also considered that the CA decision that 'no further action be taken to seek additional recognition' constituted a refusal to recommend Major [REDACTED] for a gallantry award (later identified as the MM) therefore satisfying the requirements of s110V(1)(a) and (b) of the Defence Act. The Tribunal therefore has jurisdiction to conduct the review and was satisfied that the *reviewable decision* is the decision by the CA in 2015 to refuse to recommend a gallantry award for Major [REDACTED].

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

Conduct of the review

8. In accordance with its *Procedural Rules 2011*, on 19 November 2015, the Tribunal wrote to the Secretary of the Department of Defence informing him of Major [REDACTED] application for review and requested a report on the material questions of fact and the reasons for the decision made in relation to Major [REDACTED] submission, noting that he had now specified the level of award that he was seeking.⁹ The Tribunal also requested that the Secretary provide copies of documentation relevant to the reviewable decision and that he provide a copy of Major [REDACTED] service record.

9. On 14 March 2016 the Director General Personnel – Army (DGPers-A) provided a response which indicated that a process review and archival check had been conducted by Army and as a result, the original decision was affirmed.¹⁰ Army stated that no merits review had been conducted but file evidence had been discovered which indicated that the United States Military Assistance Command – Vietnam (MACV) had formally advised Commander Australian Force Vietnam that Major [REDACTED] had been recommended for the Bronze Star for valour and for service.¹¹

10. On 16 March 2016 the Tribunal provided the Army response and associated material including archival documents and file extracts to Major [REDACTED] for comment.¹² In a letter received by the Tribunal on 22 March 2016 Major [REDACTED] provided his comments and stated that he considered Army's response to be 'unreasonable'.¹³

11. The Tribunal met on 10 November 2016 and considered the material provided by Army, Major [REDACTED] and the Tribunal's own research. The Tribunal confirmed

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

⁹ Tribunal DHAAT/OUT/2015/697 to Secretary dated 19 November 2015

¹⁰ DGPers-A /OUT/2016//R25011268 to the Tribunal dated 14 March 2016

¹¹ MACV 'Australian Policy on US Awards' dated 21 January 1972

¹² Tribunal DHAAT/OUT/2016/092 to Major [REDACTED] dated 16 March 2016

¹³ Letter from Major [REDACTED] to the Tribunal received on 22 March 2016

the scope of the review, the decision under review, jurisdiction and drafted questions for the subsequent hearing.

12. The Tribunal noted that in accordance with its *Procedural Rules 2011* the hearing into this matter would need to be conducted in public and accordingly, Major [REDACTED] was invited to provide evidence at a hearing held in Canberra on 8 December 2016. Major [REDACTED] made previous applications to the Tribunal seeking that the hearing be conducted in private and that he be given the option of not being identified in the subsequent decision report.¹⁴ After considering his requests, the Chair of the Tribunal directed that the matter be heard publicly and that the public version of the report be suitably redacted to protect Major [REDACTED] identity should the recommendation be negative.¹⁵ [REDACTED]

13. The Directorate of Honours and Awards in the Department of Defence (the Directorate) was not represented at the hearing. Army was represented at the hearing by Major Phil Rutherford however he was not authorised to make statements reflecting Army's position in response to questions asked by the Tribunal. On 9 December 2016, the Tribunal provided Army with a number of questions which were unable to be answered at the hearing.¹⁶ Army provided its response on 15 December.¹⁷ The response was passed to Major [REDACTED] on 16 December.¹⁸ Major [REDACTED] provided comments on the response on 19 December 2016.¹⁹

Historical Background

14. On 24 May 1962 the Australian Government announced that it was sending up to 30 military advisers to instruct the Army of the Republic of Vietnam (ARVN) in jungle warfare and other military skills.²⁰ The 30 specially selected officers, warrant officers and sergeants of what was to become known as the AATTV arrived in Vietnam in a training and advisory capacity as part of the MACV in August 1962. The Australians were not initially permitted to accompany the ARVN on operations, this changed in 1964. In September 1964, the number of advisers was increased to 73 and to 112 in June 1965. By November 1970 the AATTV reached a peak strength of 217.

15. The AATTV operated in small groups or as individuals attached to units or battalions as advisors, trainers and occasionally leaders. They provided advice during combat operations and assisted with artillery and aerial fire support coordination. They occasionally led South Vietnamese or Montagnard sub-units on operations. It was the longest serving and most highly decorated Australian unit of the Vietnam War with four of its members being awarded the Victoria Cross.

¹⁴ Letters from Major [REDACTED] to the Tribunal dated 27 November 2015 – Folio #64; 16 May 2016; 20 June 2016

¹⁵ Tribunal DHAAT/OUT/2016/260 to Major [REDACTED] dated 7 July 2016

¹⁶ E-mail to SO Ceremonial AHQ from the Executive Officer of the Tribunal, dated 0737 hours 9 December 2016

¹⁷ E-mail from SO Ceremonial AHQ to the Tribunal, authorised by DGPers-A dated 0820 hours 15 December 2016

¹⁸ Letter to Major [REDACTED] DHAAT/OUT/2016/520 dated 16 December 2016

¹⁹ E-mail from Major [REDACTED] received 1012 hours 19 December 2016

²⁰ AWM Fact Sheet – Australian Army Training Team Vietnam – awm.gov.au accessed 11 July 2016 –

Major [REDACTED] Service and Vietnam Deployment

16. Major [REDACTED] enlisted in the Australian Regular Army (ARA) on 13 June 1961 and was allotted to the [REDACTED]

[REDACTED] Major [REDACTED] had two tours of Vietnam with the AATTV, the first in Saigon as a temporary Warrant Officer Class Two from 11 December 1967 to December 1968. In May 1970, Major [REDACTED] was again deployed to Vietnam with the AATTV as a Warrant Officer Class Two. His second tour concluded in May 1971.

17. Major [REDACTED] left the Army on discharge in July 1986. For his service, Major [REDACTED] received the following awards:

- Australian Active Service Medal 1945-75 with Clasp 'VIETNAM';
- Vietnam Medal;
- Defence Force Service Medal with 1st and 2nd Clasps;
- National Medal;
- Republic of Vietnam Campaign Medal;
- United States Bronze Star Medal for Valour with V Device;
- The United States Army Commendation Medal;
- The Vietnamese Gallantry Cross with Silver Star (twice awarded);
- The United States Meritorious Unit Commendation; and
- Republic of Vietnam Cross of Gallantry with Palm Unit Citation.

Major [REDACTED] Bronze Star for Valour

18. On 12 July 1970 Major [REDACTED] was serving as the Assistant Battalion Advisor to the [REDACTED] (ARVN) during a battalion helicopter insertion. He was awarded the United States Bronze Star Medal for Valour with V Device for his actions during the insertion.²¹ The citation for the medal states:

... on that day Warrant Officer [REDACTED] accompanied the first flight of helicopters onto Landing Zone Kala. Almost immediately, the area was swept by machinegun fire, seriously wounding several friendly soldiers. Braving the fierce enemy fire, he crossed the open landing zone carrying one soldier to the relative safety and cover of a bomb crater and assisted in organizing the landing zone for a medical evacuation. As the helicopter approached, it received intense fire from machineguns. Warrant Officer [REDACTED] disregarded the automatic weapons fire and personally assisted in the loading of the dead and wounded, taking cover only after the loading was accomplished. The inspiration he provided by his personal bravery and coolness under fire proved to be a deciding factor in the rallying of the Vietnamese forces. During the continuing battle, Warrant Officer [REDACTED] twice returned to the fire swept landing zone to evacuate the wounded. While exposed to accurate

²¹ HQ MACV General Order 903 dated 28 February 1973

and heavy automatic weapons and mortar fire, he assisted in directing gunships and tactical air upon the enemy positions ...

Other Accounts of Major [REDACTED] Actions

19. **Major [REDACTED] Own Account.** In a letter to the Tribunal dated 17 November 2015, Major [REDACTED] included a document titled 'Action Report Kham Duc 12 July 1970'.²² During the hearing Major [REDACTED] confirmed that he had drafted the document 'a few years ago' to support his submission to the Valour Inquiry. The Tribunal was satisfied that this document records Major [REDACTED] account of the action and Major [REDACTED] stated at the hearing that he was also satisfied that this was an accurate personal account of his actions. Relevant excerpts from the report state:

... [REDACTED] was tasked to take a hill overlooking the Kham Duc airstrip, this hill to be named Landing Zone Kala was to be developed to be a Fire Support base to enable the four battalions of the 6th Regiment to patrol and engage the enemy with artillery and air support

At 0600 hours on 12 July 1970 the [REDACTED] was loaded aboard 48 UH1 helicopters (slicks) and flew west to Kham Duc. As we approached the hill flying fairly high up I noted the US Phantoms were still prepping the LZ with high explosive and cannon. Gunships circled the area laying down suppressive fire and dropping smoke to cover the landing.

The slicks landed in two's, myself and a US Ranger Lieutenant were first on the ground, which was cold, that is no enemy fire. As further slicks delivered the Vietnamese troops we began to take small arms and some heavy machine gun fire. By the time the 48 slicks had disgorged all the Vietnamese troops we began taking 82mm mortar with intense 51 call (sic) machine gun fire. We began taking casualties among the Vietnamese troops. The slicks had all gone ... I called for gunships and requested air support ...

We called for a medevac for the wounded. It is not the task of the Advisors to load the wounded but the Vietnamese were reluctant to move from cover. When the medevac helicopter arrived, in the interest of and the danger to the crew and the risk of having a downed helicopter on the LZ, we had to load the wounded as quickly as possible and get the chopper off the LZ. ... I had to literally drag the Vietnamese out to help load the wounded under intense MG and mortar fire carrying the wounded myself. In the ensuing battle ... we had two more medevac runs with the same procedure literally making the Vietnamese help ...

20. **AATTV Monthly Report for June and July 1970.** The AATTV Monthly Report for July 1970 makes no mention of the action on 12 July 1970.²³ The Report

²²Letter from Major [REDACTED] to the Tribunal dated 17 November 2015 enclosing document titled 'Action Report Kham Duc 12 July 1970'

²³AWM95 [REDACTED]

includes Annex B which is a report by Major Aitken, the 1st Corps adviser.²⁴ The Report states:

10. On 11/12 Jul ██████████ deployed into the area of Kham Duc. The initial insertion was 'cold' but on 12 Jul some 60mm rounds were received. Since the operation started contacts have been relatively light ... at time of reporting the number of incoming rounds is increasing and now includes 82mm mortar ...

21. Major Aitken's report also contains a 'summary of significant contacts involving units having Australian Advisers in 1 Corps – Jul 70'. The summary includes brief mentions of the 12 July 1970 action, recording that '██████████ received an unknown number of 60mm mortars resulting in 7 friendly WIA' and mentions that 'a number of weapons and some ammunition is captured'.²⁵ There is no mention of Major ██████████ actions in Aitken's report.

22. The AATTV Monthly Report includes an Annex which lists the deployment locations of members of the AATTV during July 1970.²⁶ Serial 64 and 65 of the Annex records that ██████████ employed two advisers:

██████████

23. The Tribunal noted that the AATTV Monthly Report for June 1970 records that the ██████████ His tour of duty with the AATTV concluded 11 June 1970 and ██████████ commenced 16 July 1970.²⁷

24. **The Official History.** There is no specific mention of Major ██████████ in the Official History *Fighting to the Finish: The Australian Army and the Vietnam War 1968-1975* or of the action on 12 July 1970.²⁸

Major ██████████ Submissions

25. **Valour Inquiry Submission.** Major ██████████ initial submission to the Valour Inquiry in 2011 established his contention that Australians who were awarded United States and Vietnamese gallantry/valour awards during the Vietnam War should be given the 'equivalent Australian awards'.²⁹ He stated that as a ██████████ ██████████ on his second tour with the AATTV he had:

... served as an Infantry Advisor to an Infantry Battalion ...

²⁴ Ibid. Annex B

²⁵ Ibid. Appendix 1 to Annex B, Serial 33, 38, 40, 41 and 42.

²⁶ Ibid. p.5

²⁷ <http://nominal-rolls.gov.au> accessed 11 November 2016

²⁸ Ashley Ekins with Ian McNeil, *Fighting to the Finish: The Australian Army and the Vietnam War 1968-1975*, Allen and Unwin in association with the Australian War Memorial, 2012

²⁹ Submission ██████████ to the Valour Inquiry by Major ██████████ dated 18 April 2011

... advisors were allocated two to each Battalion, one Australian Warrant Officer and one American.

There were no Australian officers.

...my duties as Battalion Advisor was to coordinate the battalion's movements in advance and attack. I would call up and run all fixed wing airstrikes, all US gunships, all US artillery support and all medical evacuations of wounded soldiers ...

26. Major ██████ asserted that the majority of the recipients of foreign gallantry medals were members of the AATTV and that 'these awards were not permitted to be accepted until 1997 for the US awards and 1998 for the Vietnamese awards'. He further stated that during the war, 'commanders of AATTV used US and Vietnamese citations to award an Imperial equivalent'. He stated that due to the quota system, 'many deserving acts of gallantry and valour went unrewarded'.

27. Major ██████ also asserted that the Imperial system required an Australian officer to be present to 'witness the event' and to recommend awards. He stated that this was not possible in many cases for the AATTV, declaring that:

... on my second tour 1970-71 there was never an Australian officer with me on operations.

28. Major ██████ concluded his submission by stating that it was his 'firm belief that Australian medals are for Australians and should not be overridden by foreign medals or passed over because some other country got in first'. Major ██████ attached various citations for the other foreign awards he had received as evidence of his actions. In a further letter dated 6 February 2012, Major ██████ provided additional commendations and reports in support of his submission. These included an annual appraisal report from 1971 and personal letters of appreciation/references provided by Army subsequent to his discharge.³⁰

29. On 25 May 2012 Major ██████ wrote to the Tribunal seeking recognition that the 'double medalling policy' was not applied during the Vietnam War.³¹ He asserted that:

21 members of the AATTV were awarded the United States Silver Star and 19 of those were also awarded an Imperial award for the same action, and

... the US Bronze Star for Valour was treated in the same manner, 69 members of the AATTV who were awarded the Bronze Star for Valour 'not to be confused with the US Bronze Star for Meritorious Service' 22 were presented with a British award ...

30. **2015 Application for the Military Medal.** Having received the CA decision, Major ██████ made a 'fresh application' on 17 November 2015 seeking that the

³⁰ Letter from Major ██████ to the Tribunal dated 6 February 2012

³¹ Letter from Major ██████ to the Tribunal dated 25 May 2012

citation for his 'Silver Star/US Bronze Star with V device for Valour be considered at the Military Medal level'.³² In this application he restated his original circumstances, pointing out that all members of the AATTV were under command of the Commander AATTV who was located in Saigon and that 'we were never under command of US or Vietnamese forces'. He further stated that:

There were no Australian Commissioned Officers in the Regiment, the closest Australian officer was located in Da Nang ...; and

As there were no Australian officers present in the field or Regiment, any action by me or other Warrant Officers that may warrant any consideration for medallic recognition could only be done by US or SVN officers ...

31. Major [REDACTED] asserted that Australian commanders in the Force headquarters 'used US citations to further investigate and possibly recommend British/Australian awards or decorations'. He supported this assertion with a statement he acquired from Brigadier Burnard, the Commander AATTV in 1968/69.³³ Brigadier Burnard stated that:

... most of the Team serving with the ARVN were alone and in preparing a citation I had to rely on US Army 'After Action Reports' and citations. I rarely used Vietnamese citations as they were unreliable. I also took advice from the senior member of the Team in each Corps area in preparing a citation ...

32. Major [REDACTED] restated his assertions regarding 'double medalling' stating that:

... 27 members of AATTV who were awarded the US Bronze Star for Valour were awarded medals from the Distinguished Conduct Medal (DCM) to Mentioned in Despatches (MID).

33. Major [REDACTED] indicated that he understood that 'awarding British/Australian awards for foreign awards was not an automatic entitlement however it is a way of correcting a disadvantage that the AATTV Warrant Officer had of not having an Australian Officer to witness his deeds'.

34. Major [REDACTED] indicated that he had been unable to find evidence that his AATTV Commanders in the period 1970-71 had 'seen his recommendation for the US Silver Star/Bronze Star Medal for Valour'. He stated that there:

was evidence that his citation ... was not available to the decision-maker of the time caused by a breakdown in due process ...;

my commander was denied the opportunity to view a citation for a member of his unit which he may have considered ...; and

³² Letter from Major [REDACTED] to the Tribunal dated 17 November 2015

³³ Letter from Brigadier Burnard to Mr [REDACTED] dated 9 July 2015

my appeal is based on the fact that my citation through no fault of mine was not considered ...

35. **2016 Comments in Response to the Army Submission.** Major [REDACTED] provided a response to the Army submission in a letter received by the Tribunal on 22 March 2016.³⁴ In this letter he stated that the CA decision was 'unreasonable' and his submission had not been properly considered. He asserted that the 'United States forces were not my commanders' and were not authorised to make recommendations for Australian awards. He indicated that the 2016 response from Army provided evidence that in late 1971, Headquarters Australian Forces Vietnam (HQ AFV) was unlikely to be aware of his nomination for the Bronze Star and that the nomination had not been seen by his commander as it was held at MACV.

36. Major [REDACTED] asserted that having his name on a list provided by MACV was 'not sufficient evidence to raise or consider a recommendation for an Imperial award'. He summarised the Army response as proof that it was 'standard practice for Commanders of AATTV to use US citations to raise recommendations for Imperial awards' and that as the policy for acceptance and wearing of foreign awards was under review at the time, 'US nominations for Australian personnel were not processed' and were retained by MACV. Major [REDACTED] again stated that the Army response provided sufficient proof that his Commander never saw his citation for the Bronze Star and as a result, his application satisfied the guidelines for 'compelling new evidence not available to the decision maker at the time'. Major [REDACTED] stated that this in itself was 'a blatant case of maladministration'.

37. Major [REDACTED] concluded this response by stating that in his view:

... this is a matter of my citation being caught up in the non-acceptance and then acceptance of foreign awards and the confusion where the US were not sure of what to do about making US awards to Australians and time ran out when nominations for Imperial awards ended on 30 June 1972.

38. Major [REDACTED] attached a list of AATTV members who were 'awarded US honours and subsequently awarded Imperial honours'. He claimed that a comparison of the citations for four other members of the AATTV who received the MM were similar to his own cited actions.

39. On 2 May 2016, Major [REDACTED] wrote to the Tribunal submitting a summary of his own citations and once again claimed that the summary:

*is comparable to the citations for the Military Medals awarded as shown on the citations enclosed to the Army's response of 14 March 2016.*³⁵

40. **Oral Evidence.** During the hearing, Major [REDACTED] confirmed his previous submissions and clarified that on 12 July 1970 the only other advisor with the Battalion was Lieutenant Ralph Potter, a US Officer. Major [REDACTED] was of the opinion that Lieutenant Potter was most likely the officer who had drafted the Bronze

³⁴ Letter from Major [REDACTED] to the Tribunal received on 22 March 2016

³⁵ Letter from Major [REDACTED] to the Tribunal dated 2 May 2016

Star citation. He said that after-action reports by himself and Potter were most likely sent to the next level of US command but not to his Australian chain of command. Major [REDACTED] confirmed that he had not retained a copy of his own after-action report.

41. Major [REDACTED] tabled a copy of his original personal note book/diary at the hearing and an original copy of a recommendation for a further Bronze Star for service covering the entirety of his deployment which was certified as having been received by HQ AATTV. This recommendation does not mention the 12 July action and Major [REDACTED] confirmed that although he was nominated for the award, he never received a further Bronze Star.

42. Major [REDACTED] note book/diary records that on 12 July 1970 the Battalion was engaged by a platoon with heavy weapons after the insertion and three soldiers were wounded followed by another three sometime later. Major [REDACTED] described the context of the insertion during the hearing. He stated the insertion was into an abandoned defensive position which had been vacated by US forces some years previously. He said that at least 400 troops from the Battalion were on the ground having been inserted by approximately 48 helicopters and that shortly after the helicopters departed, the landing zone came under heavy fire and up to seven soldiers were wounded, some seriously by .50 calibre machine gun fire. He indicated that he was required to assemble the wounded, carrying or dragging them to a central location before quickly loading them onto an evacuation helicopter which he had called for. He stated that the operation continued for two further days until the Battalion had secured the objectives around the landing zone.

43. The Tribunal noted that Major [REDACTED] had indicated in one of his letters that he only wanted the citation for the Bronze Star to be considered in his claim for the MM, however during the hearing he stated that he wanted the other material, including his Vietnamese and US awards and the tabled second Bronze Star recommendation to also be considered as supporting evidence to his claim. Major [REDACTED] confirmed this in a subsequent letter to the Tribunal dated 12 July 2016 stating that he wanted these citations and the citation supporting the award of the US Army Commendation Medal to 'be also considered for acts of gallantry'.³⁶

44. Major [REDACTED] acknowledged during the hearing that Imperial awards were no longer available and that he considered that he should be awarded the Medal for Gallantry as it appeared 'to be an equivalent award to the MM'.

The Army Submissions

45. In 2014 Army undertook an individual review of Major [REDACTED] submission.³⁷ This review identified that Major [REDACTED]

was deployed with the AATTV but the nature of his role brought him under command and serving with foreign forces.

³⁶ Letter from Major [REDACTED] to the Tribunal dated 12 December 2016

³⁷ Army Review of Submission [REDACTED] – Major Michael [REDACTED]

46. The review stated:

that an authorised nominating officer from the Australian forces did not recommend an award does not in itself constitute maladministration unless there is evidence the command believed he warranted recognition and failed to nominate him; and

... the awarding of a foreign honour to a member of the Australian military is not an entitlement and does not mandate a recommendation for an Imperial or Australian award.

47. Army concluded that 'in the absence of new authoritative and compelling information or evidence of maladministration, Army will not be pursuing recognition for Major [REDACTED]'.

48. The decision was communicated to Major [REDACTED] by CA on 5 May 2015.³⁸ The CA indicated that no evidence had been found to support the assertion that he had not been nominated by his Australian commander for recognition, or that his actions had not been appropriately considered, or that any recommendation had been obstructed or unfairly treated.

49. After receipt of Major [REDACTED] application for review, the DGPers-A reconsidered the claims and provided a response which indicated that a process review and archival check had been conducted by Army and as a result, the original decision was affirmed.³⁹

50. The response indicated that after reviewing files:

Army was able to reasonably conclude that standard practice was for nominations for US awards to Australians to be copied to HQ AFV to enable consideration of an Imperial award while the Commander MACV retained a copy ...

51. The response confirmed that at the time of Major [REDACTED] nomination for the Bronze Star, 'the Australian policy regarding acceptance and wearing of foreign awards was under review therefore US nominations for Australian personnel were not processed and were being held at HQ MACV'. Army stated that their research indicated that in late 1971 nominations for US awards for Australians continued to be processed pending policy approval from the Sovereign for acceptance and wearing. Army stated that this agreement generated several lists and these lists were attached to the response.

52. Army stated that it was:

satisfied that Major [REDACTED] actions on 12 July 1970 in Vietnam were appropriately considered by the chain of command at the time and processed in accordance with policy and accepted practices.⁴⁰

³⁸ CA OCA/OUT/2015/R21045044 to Major [REDACTED] dated 5 May 2015

³⁹ DGPers-A /OUT/2016//R25011268 to the Tribunal dated 14 March 2016

⁴⁰ Ibid. p.7

53. Army indicated that 'Major [REDACTED] name appears on a list of 21 January 1972 from US MACV to HQ AFV identifying personnel not listed by HQ AFV'.⁴¹ Army concluded that the list indicated that:

*in late 1971 HQ AFV was likely to be unaware of Major [REDACTED] nomination.*⁴²

54. Army also addressed the quota system in the response, concluding 'that for the period June to July 1970, 30 decorations were awarded from a quota of 31'.

55. The response concluded that no merits review had been conducted and that Army was 'unable to provide comment or input to the merits of recognising Major [REDACTED] actions on 12 July 1970'.⁴³ Army maintained this position in response to questions asked at the hearing on 8 December 2016.

The Military Medal

56. Section F of the *Pamphlet on Military Honours and Awards* (WO 12922) dated July 1960 provides descriptions and guidance on the eligibility criteria (conditions) for Imperial awards that were available during the Vietnam War.⁴⁴ The guidance states that the conditions for the award of the MM are that it may be awarded 'on the recommendation of Commanders to 'all other ranks of the military forces':

for a specific act of gallantry in the Field, or for a continuous display of bravery over a specified period of active operations

Tribunal Consideration

57. **General.** The Tribunal is required to review decisions 'on the merits'. This requires an examination of the merits of the matter in dispute rather than the lawfulness of the decision under review.⁴⁵ The merits review revolves around the evidence and accordingly, the Tribunal conducts an independent review, with values, expertise, methods and procedures of its own, and not those of the decision-maker.

58. The facts, law and policy aspects of the decision are all considered afresh and a new decision made.⁴⁶ The Tribunal reviews the decision, and not the reasons for the decision. In doing so, there is no legal onus of proof, and there is no presumption that the decision was correct.⁴⁷ The Tribunal is bound to make what it regards as the 'correct or preferable' decision and must reach a decision that is legally and factually correct.

⁴¹ MACV 'Australian Policy on US Awards' dated 21 January 1972

⁴² DGPers-A /OUT/2016//R25011268 to the Tribunal dated 14 March 2016, p. 11

⁴³ Ibid. p.15

⁴⁴ Pamphlet on Military Honours and Awards 1960 WO Code No 12922 – War Office (MS3) July 1960

⁴⁵ *Council of Australian Tribunals Practice Manual* dated 7 April 2006 p.1.3.1.2

⁴⁶ Pearson, Linda, "Merit Review Tribunals", in Creyke, Robin and McMillan, John, *Administrative Law – the Essentials*, AIAL 2002, p. 68

⁴⁷ *McDonald v Director-General of Social Security* (1984) 1 FCR 354

59. **Major [REDACTED] Service Record.** There is no dispute that Major [REDACTED] served with the AATTV and that on his second tour of duty he was serving as an advisor to the [REDACTED] (ARVN). There is no dispute that Major [REDACTED] was awarded the Bronze Star for his actions on 12 July 1970 and the Tribunal is reasonably satisfied that the citation supporting this award in all likelihood accurately portrays Major [REDACTED] actions.

60. The Tribunal notes that Major [REDACTED] also received other foreign awards for his service in Vietnam in 1970-71 including the US Army Commendation Medal for his service during his second tour of duty with the AATTV and the Vietnamese Gallantry Cross with Silver Star for coordination of manoeuvre and fire support to his battalion between 1 July and 30 September 1970.⁴⁸ He received a second Vietnamese Gallantry Cross with Silver Star for coordinating offensive operations between 1 October and 31 December 1970.⁴⁹ The Tribunal noted that Major [REDACTED] asked at the hearing that the citations for these awards and also an appraisal report be considered as supporting evidence for his claim. In effect Major [REDACTED] changed his original request that only his actions on 12 July be considered and asked that the Tribunal take into account his other service during the deployment as evidence of his gallantry.

61. **Legislation.** The Tribunal was reasonably satisfied that the correct legislation to answer Major [REDACTED] claim for the MM is the *Pamphlet on Military Honours and Awards* (WO 12922) dated July 1960. The Tribunal noted that to be eligible for this award Major [REDACTED] would need to be 'recommended by his Commander' and there would need to be evidence that he had performed:

a specific act of gallantry in the field, or a continuous display of bravery over a specified period of active operations

62. The Tribunal noted that Australian service personnel received honours and awards including the MM under the Imperial system until February 1975 when the Government introduced the Australian system. The two systems – the Imperial and the Australian; then operated in parallel until October 1992 when the Government announced that Australia would no longer make recommendations for Imperial awards:⁵⁰

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

63. As the Tribunal is unable to make recommendations relating to Imperial honours, it may only review eligibility for contemporary gallantry awards for Major [REDACTED]

⁴⁸ ARVN Award proposal dated 6 January 1971

⁴⁹ ARVN Award proposal dated 15 February 1971

⁵⁰ Prime Minister of Australia Media Release 111/92 dated 5 October 1992

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

*'according recognition to members of the Defence Force and certain other persons who perform acts of gallantry in action.'*⁵¹

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

...

Conditions for award of the decorations

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

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

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

4. *Each decoration may be awarded posthumously. ...*

Making of awards

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

...

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

*... other ranks in the Army are eligible for the MM ... which translates to the single decoration of the Medal for Gallantry.*⁵²

67. The Tribunal did not consider that a merits review could fairly adopt a simple 'equivalency' matrix and therefore discarded the advice that the 'MM could be translated to the MG'. The Tribunal decided that in conducting the merits review it would consider all of the material before it, including evidence available from Major [REDACTED] account of the action on 12 July 1970, citations for various awards tendered by Major [REDACTED], historical records, the service record and oral evidence, and Major [REDACTED] claims; as well as the evidence, available to the Army in 2015 and 2016. Noting that Imperial awards were no longer available, the Tribunal determined that it would assess the evidence against the eligibility criteria for the MM and, if it could be established that the evidence supported the award of the MM, it would then assess the evidence against the eligibility criteria for contemporary gallantry awards.

⁵¹ Commonwealth of Australia Gazette No. S25 – Gallantry Decorations Regulations - dated 4 February 1991

⁵² Independent Review Panel of the End of War List – Vietnam dated 25 August 1999, P.17

Assessment of Major [REDACTED] Claims and the Nomination Process.

68. **Major [REDACTED] Role and Deployment as an Advisor.** There is some confusion regarding Major [REDACTED] actual role with the Battalion and who was with him during his deployment. Major [REDACTED] states that:

there was never an Australian officer with me on operations and one Australian Warrant Officer was allocated to each battalion.

69. The Tribunal noted that the AATTV Monthly Report for July 1970 lists deployment locations and records that [REDACTED] employed two advisers:

[REDACTED] 53

70. The Tribunal also noted that the June 1970 AATTV Report records that the Senior Adviser was [REDACTED].⁵⁴ The Tribunal asked Major [REDACTED] to clarify his claim during the hearing and he stated that:

there was a WO2 whose tour finished in June and I think I replaced him, he was wounded and I met him at the airfield when I arrived in country. Captain [REDACTED] arrived sometime later perhaps in August but was only with us for about a week. Apart from the US Lieutenant (Potter) there were no other advisers with me during the action on 12 July 1970.

71. Having considered Major [REDACTED] response during the hearing, the Tribunal was satisfied that there was no other Australian present on 12 July 1970. The Tribunal asked Major [REDACTED] who would have actually drafted the US Bronze Star recommendation and whether there was a possibility that Captain [REDACTED] had been involved in this as the Senior Adviser in late July 1970? Major [REDACTED] responded that he thought it was drafted by Lieutenant Potter but he could not be sure. He said he had never seen or heard from Potter again after the operation and did not know what had become of him.

72. **Processing of the Nomination for the Bronze Star and Consideration for an Australian Award.** The Tribunal notes that the CA decision stated that 'Army could not locate any evidence that your actions were not considered' and the DGPers-A reconsideration states that Army is satisfied that Major [REDACTED] actions on 12 July 1970:

*were appropriately considered by the chain of command at the time and processed in accordance with policy and accepted practices.*⁵⁵

73. The Tribunal noted that in the same document Army supported the contention that his nomination was not considered when stating:

⁵³ AWM95 – [REDACTED]

⁵⁴ AWM95 – [REDACTED]

in late 1971 HQ AFV was likely to be unaware of Major [REDACTED] nomination.⁵⁶

74. During the hearing the Tribunal asked Army to clarify whether or not they considered that Major [REDACTED] nomination for the Bronze Star had been considered by the chain of command as the written response they provided appeared contradictory.

75. After the hearing a response to the question was provided by e-mail stating:

Major [REDACTED] name appeared on a list from US MAC-V to HQ AFV of 21 January 1972, identifying personnel from Australia nominated for a foreign award but not captured by HQ AFV. However, MAJ [REDACTED] name does not appear on a later list of 21 February 1972 from HQ AATTV to HQ AFV, indicating the nomination had been captured and that both HQ AATTV and HQ AFV were aware of the nomination at this point. It can be reasonably concluded from the correspondence between HQ AFV, HQ AATTV and US MAC-V that efforts were made late 1971 to early 1972 to identify all Australian personnel that had been nominated for a US award and that as part of this process, MAJ [REDACTED] nomination was captured. Army considers that during this process the nomination was reviewed, and whether conscious or not, a decision was made not to proceed with an Imperial nomination.⁵⁷

76. The Tribunal noted the letter from MACV to HQ AFV on 21 January 1971 which indicated that it had processed a nomination for the Bronze Star for Major [REDACTED] and that he was one of 155 who 'were not included on the original list you furnished'.⁵⁸ The Tribunal also noted that on 21 February 1971 AATTV wrote to HQ AFV stating that it had checked records and provided names of members whose recommendations for US awards were 'not listed in the files maintained by HQ AFV'.⁵⁹ Major [REDACTED] name was not on this list.

77. The Tribunal was satisfied on the balance of probabilities that the citation for the Bronze Star was drafted by Lieutenant Potter and submitted through the US chain of command to MACV. The Tribunal was also reasonably satisfied that if Major [REDACTED] name was not listed in the files held by HQ AFV, by implication this perhaps suggested that his name was on a file, however there was no evidence to support this position.

78. The Tribunal noted the 15 February 2016 Army advice that it 'considers that during this process the nomination was reviewed, and whether conscious or not, a decision was made not to proceed with an Imperial nomination'. Major [REDACTED] refuted this advice in an e-mail dated 19 February 2016. However, in the absence of evidence to support the Army advice, the Tribunal was of the opinion that Major

⁵⁶ Ibid. p.11

⁵⁷ E-mail from SO Ceremonial AHQ to the Tribunal, authorised by DGPers-A dated 0820 hours 15 December 2016

⁵⁸ MACV 'Australian Policy on US Awards' dated 21 January 1972

⁵⁹ HQ AATTV Saigon 445-3-4 Letter to HQ AFV dated 21 February 1972 'Foreign Decorations and Awards'

█████ nomination may not have been presented to HQ AFV and there was a strong possibility that it was not considered by Commander AATTV.

79. **Use of Foreign Citations for Nominations for Imperial Awards.** The Tribunal accepted the evidence provided by Major █████ and specifically the statement by a previous commander of AATTV, Brigadier Burnard that it was 'standard practice to rely on US Army After Action Reports and citations' in considering further recognition.⁶⁰ The Tribunal also noted that Army agreed with this:

*Army was able to reasonably conclude that standard practice was for nominations for US awards to Australians to be copied to HQ AFV to enable consideration of an Imperial award while the Commander MACV retained a copy ...*⁶¹

80. **Finding in Relation to the Nomination Process.** The Tribunal having considered the evidence and the material provided by Army following archival research was reasonably satisfied that foreign awards citations were used by Australian Commanders during the Vietnam war to inform recommendations for Imperial awards.

81. The Tribunal having considered the evidence regarding Major █████ nomination for the Bronze Star finds that his citation was in all likelihood not considered by Commander AATTV. The Tribunal further finds that the nomination for the Bronze Star may not have been considered by HQ AFV.

82. **Does a Lack of Consideration Constitute Maladministration?** The Tribunal noted that Major █████ asserts that his case can be seen as maladministration and:

*my appeal is based on the fact that my citation through no fault of mine was not considered ...*⁶² (emphasis added by Major █████)

83. The Tribunal notes that Army addressed this issue in the CA decision stating that failure to recommend a foreign award:

... in itself does not constitute maladministration unless the Australian command believed you warranted recognition and failed to nominate you, of which no evidence could be located ...

84. The Tribunal was satisfied that in this matter, whether or not the non-consideration of the Bronze Star recommendation could be viewed as maladministration is largely irrelevant as regardless, the Tribunal is bound by legislation to conduct a merits review of Major █████ actions. Having found that the citation for the Bronze Star may not have been considered by HQ AFV, the Tribunal turned to a review of the action on 12 July 1970 and an assessment of this

⁶⁰ Letter from Brigadier Burnard to Mr █████ dated 9 July 2015

⁶¹ DGPers-A /OUT/2016//R25011268 to the Tribunal dated 14 March 2016

⁶² Major █████ letter to the Tribunal dated 17 November 2015

action and Major [REDACTED] other cited actions/service against the eligibility criteria for the MM.

Accounts of the Action and Gallantry

85. The Tribunal reviewed the various accounts of the action on 12 July 1970 to determine what evidence there was to support Major [REDACTED] claims that he should be considered for a gallantry award. In so doing the Tribunal noted the definition of 'gallant' - ... 'brave and dashing', with dashing described as 'impetuous; spirited; lively'.⁶³

86. Noting the eligibility criteria for the MM, the Tribunal was satisfied that to be eligible for the MM there would need to be evidence that Major [REDACTED] had performed:

a specific act of gallantry in the Field or a continuous display of bravery over a specified period of active operations.

87. The Tribunal noted the following facts:

- a. There is no specific mention of the action on 12 July 1970 or of Major [REDACTED] in the Official History *Fighting to the Finish: The Australian Army and the Vietnam War 1968-1975*.⁶⁴
- b. There is no mention of the action on 12 July 1970 in the AATTV Monthly Report for July 1970.⁶⁵
- c. The AATTV 1st Corps senior adviser – Major Aitken does list the insertion on 12 July 1970 in his monthly report and his list of 'significant contacts', but there is no mention of Major [REDACTED] in the report.⁶⁶

88. The Tribunal noted that the 1st Corps Adviser reported that the initial insertion into the area of Kham Duc was 'cold' and that contacts were 'relatively light'.⁶⁷ The Tribunal gave little weight to this statement as it appears the report was written during the actual action as evidenced by the statement that:

at time of reporting the number of incoming rounds is increasing and now includes 82mm mortar

89. The Tribunal concluded that it was likely that Major Aitken was writing his report as the situation on 12 July 1970 was unfolding. During the hearing, Army indicated that Major Aitken was most likely gaining his information from live monitoring of radio nets and sequential radio log books.⁶⁸ Notwithstanding, the Tribunal noted that Major Aitken did not mention Major [REDACTED] in his report or in the

⁶³ *The Macquarie Encyclopedic Dictionary*, Macquarie University 1990

⁶⁴ Ashley Ekins with Ian McNeil, *Fighting to the Finish: The Australian Army and the Vietnam War 1968-1975*, Allen and Unwin in association with the Australian War Memorial, 2012

⁶⁵ AWM95 – [REDACTED]

⁶⁶ Ibid. Annex B

⁶⁷ Ibid. Annex B

⁶⁸ Oral Evidence Major Rutherford 8 December 2016

attached 'summary of significant contacts involving units having Australian Advisers in 1 Corps - Jul 70'.

90. **Major [REDACTED] Account of the Action.** The Tribunal noted that Major [REDACTED] account of the action is contained in a document he wrote titled 'Action Report Kham Duc 12 July 1970'. The Tribunal was satisfied that the document gave an accurate portrayal of the context of the action. The Tribunal noted that according to the account, 48 aircraft had 'disgorged all the Vietnamese troops' when the area began to take fire and casualties. The Tribunal noted that Major [REDACTED] stated that he had to 'literally drag the Vietnamese out to help load the wounded under intense MG and mortar fire carrying the wounded myself'. He also stated that he did this on two other occasions. The Tribunal noted that Major [REDACTED] did not consider this to be 'the task of the Advisors'.

91. The Tribunal gave some weight to Major [REDACTED] own account of the action and was satisfied that in difficult circumstances he was required to motivate the Vietnamese to assist him in the loading of casualties and that this loading did take place under fire. The Tribunal noted that the context of the action saw at least 400 soldiers on the ground at the time of the action and that whilst Major [REDACTED] may have considered that it was not his job to load casualties, in the Tribunal's opinion it was reasonable to expect that as he was in a position of responsibility, he would take action and thus provide an example to the ARVN troops. The Tribunal considered that this could be seen as actually doing his job, albeit in difficult circumstances.

92. **The Account of the Action as stated in the Citation for the Bronze Star.** The Tribunal noted that the only independent account of the action is that contained in the citation for the Bronze Star.⁶⁹ There are some inconsistencies in the citation in comparison to Major [REDACTED] account and Major Aitken's report particularly as it relates to whether the insertion was 'cold' or not. However, the citation does state that Major [REDACTED]

crossed the open landing zone carrying one soldier to the relative safety ... and that he

personally assisted in the loading of the dead and wounded, taking cover only after the loading was accomplished ...

The citation also confirms that he did this on two occasions. The Tribunal having also considered Major [REDACTED] oral evidence was satisfied that on 12 July 1970 he was involved in centralising up to seven casualties and assisting in loading them onto an evacuation helicopter under fire.

93. **Army Assessment of the Action on 12 July 1970.** The Tribunal noted that Army did not conduct an assessment of the action on 12 July 1970 and when asked during the hearing if, having now heard all of the evidence including Major [REDACTED] oral evidence and examined the matter on three separate occasions, they had a view as to whether Major [REDACTED] actions would warrant a gallantry award, they subsequently stated:

⁶⁹ HQ MACV General Order 903 dated 28 February 1973

with regard to the Tribunal's question regarding the merits of Major [REDACTED] actions, as stated in para 15 of DGPERS-A letter of 14 March 2016, Army has not examined the specific actions of Major [REDACTED] on 12 July 1970 and cannot provide comment on the merits of any award.⁷⁰

94. **Finding in Relation to the Action on 12 July 1970.** The Tribunal was satisfied that Major [REDACTED] did assist in the loading of casualties under fire and did provide motivation and example to the soldiers he was responsible to advise by his actions. The Tribunal finds that Major [REDACTED] actions in assisting with the loading of the wounded onto helicopters under fire was a courageous act but could not be described as 'brave and dashing'. Accordingly, the Tribunal finds that Major [REDACTED] actions do not meet the threshold for a gallantry award.

95. **New Evidence.** The Tribunal noted that Major [REDACTED] diary and the citation for the recommendation for a second Bronze Star was tabled as new evidence in support of his claim during the hearing. Having reviewed the contents of the document, the Tribunal was satisfied that the diary confirmed the cited description of Major [REDACTED] actions on 12 July 1970 without adding any further material of substance.

96. **Consideration of Supporting Evidence.** The Tribunal noted that Major [REDACTED] wished to have his additional awards considered by the Tribunal. The Tribunal noted that the recommendation for the second Bronze Star was for 'meritorious service' and that there is no mention of bravery or acts of gallantry in the narrative.⁷¹ The citation concludes that Major [REDACTED] during the period May 1970 to May 1971:

displayed the highest qualities of leadership and devotion to military service

97. Similarly, the Tribunal noted that the two citations for the award of the Gallantry Cross with Silver Star do not make mention of specific acts of bravery stating:

... on numerous occasions the unit contacted the enemy and met stiff resistance ... he courageously called down direct, accurate fire ...⁷²

... he willingly and to the utmost of his ability closely cooperated with the Operational Headquarters in such tasks as manoeuvring the troops in their advance, attacking the enemy ...⁷³

98. The Tribunal noted that the citation for the US Army Commendation Medal is for meritorious service in the Republic of Vietnam from May 1970 to May 1971.⁷⁴

⁷⁰ E-mail from SO Ceremonial to the Tribunal, authorised by DGPers-A dated 0820 hours 15 December 2016

⁷¹ Recommendation for Award by Adjutant General (sic) US Army Advisory Group dated 19 April 1971 – tendered by Major [REDACTED] 8 December 2016

⁷² Award Proposal for the Republic of Vietnam Gallantry Cross with Silver Star dated 24 January 1971

⁷³ Award Proposal for the Republic of Vietnam Gallantry Cross with Silver Star dated 15 February 1971

The citation does not provide evidence of bravery or gallantry, instead indicating that Major [REDACTED]

*... provided sound advice ... effective instruction ... and the highest qualities of leadership and devotion to duty ...*⁷⁵

99. Having reviewed the various additional supporting award citations, the Tribunal finds that they do not provide evidence of bravery but rather provide a clear indication of Major [REDACTED] overall meritorious performance of duty and service during the periods in question. Accordingly, the Tribunal finds that Major [REDACTED] actions during his second deployment to Vietnam with the AATTV in 1970-71 cannot be considered to be a 'continuous display of bravery over a specified period of active operations'.

100. **Precedent.** The Tribunal noted Major [REDACTED] assertions regarding precedent established by the granting of both Imperial awards and foreign awards to other members of the AATTV claiming that this precedent could be applied to his own eligibility. The Tribunal did not accept that precedent was a justifiable factor in determining eligibility for defence honours and awards. Eligibility is determined by 'the conditions for the award of the decorations' as declared in the Instruments, Regulations and Determinations for each particular honour or award. Eligibility is determined in each matter according to its own facts and in the case of gallantry, decisions to grant awards are discretionary. The Tribunal dismissed Major [REDACTED] assertion regarding precedent, preferring to determine eligibility based on individual merits - precedent not being a relevant consideration.

Finding in Relation to the Merits Review

101. No previously missing, new or compelling evidence was produced that would cause the Tribunal to conclude that Major [REDACTED] actions during the helicopter insertion to Kham Duc on 12 July 1970 were more substantial than are recorded in the citation for his Bronze Star. The Tribunal, relying significantly upon the citation and with insufficient evidence available that could point to 'a continuous display of bravery over a specified period of active operations' finds that Major [REDACTED] actions on 12 July 1970, whilst undeniably courageous, did not meet the threshold for the MM and that his actions were appropriately recognised by the award of the US Bronze Star Medal with 'V' Device. This finding does not in any way diminish the contribution Major [REDACTED] made to his country during his service in Vietnam or during his Army service.

TRIBUNAL DECISION

102. The Tribunal decided to recommend to the Minister that the decision by the Chief of Army that no further action be taken to seek additional recognition for Major [REDACTED] for his service with the Australian Army Training Team Vietnam in 1970-71 be affirmed.

⁷⁴ The Army Commendation Medal – [REDACTED] dated 28 February 1973.

⁷⁵ Ibid.