



Australian Government

Defence Honours and Awards Appeals Tribunal

Reid and the Department of Defence [2017] DHAAT 22 (30 November 2017)

File Number 2017/02

Re **Mr Ian Reid**
Applicant

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

Tribunal Ms Naida Isenberg (Presiding Member)
Brigadier Mark Bornholt, AM (Retd)
Mr David Ashley, AM

Hearing Date 12 September 2017

DECISION

On 30 November 2017, the Tribunal decided to recommend to the Minister that:

- a. the decision by the Deputy Chief of Army to not support Mr Ian Reid's request for the award of the Victoria Cross for Australia for his actions as a Platoon Medical Assistant during a platoon ambush near the village of Phuoc Loi in South Vietnam on 30 April 1970 be set aside, and
- b. the Minister recommend to the Governor-General that Mr Ian Reid be awarded the Medal for Gallantry for acts of gallantry in action in hazardous circumstances as the Platoon Medical Assistant with 7 Platoon, Charlie Company, 7th Battalion, The Royal Australian Regiment during a platoon ambush near the village of Phuoc Loi in South Vietnam on 30 April 1970.

CATCHWORDS

DEFENCE HONOUR – *Victoria Cross for Australia - Gallantry Decorations – 7RAR - Vietnam - medic – “hazardous circumstances”*

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 Victoria Cross Regulations and Gallantry Decorations Regulations dated 4 February 1991

REASONS FOR DECISION

Introduction

1. On 3 November 2014 Mr Ian Reid (Mr Reid, Private Reid) applied to the Directorate of Honours and Awards in the Department of Defence (the Directorate) seeking the Victoria Cross for Australia (VC) in recognition of his actions as the Platoon Medical Assistant (platoon medic) during a platoon ambush near the village of Phuoc Loi in South Vietnam on 30 April 1970. Mr Reid's actions had been the subject of two earlier submissions to the Tribunal's *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour* (the Valour Inquiry).¹

2. On 16 June 2015, the Deputy Chief of Army (DCA) wrote to Mr Reid informing him that 'in the absence of an approval for the honour or evidence of maladministration', Army would not support his request for recognition.² On 14 January 2017 Mr Reid made application to the Tribunal seeking a review of DCA's decision.³

Tribunal Jurisdiction

3. 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 defence honour as being those awards set out in Part 1 of Schedule 3.⁴ Included in the defence honours set out in Part 1 is the VC.

4. The Tribunal was satisfied that Mr Reid's application to the Directorate on 3 November 2014 constituted an application as defined in s110V(1)(c) of the Defence Act. The Tribunal also considered that DCA's decision of 16 June 2015 constituted a refusal to recommend Mr Reid for the VC therefore satisfying the requirements of s110V(1)(a) and (b) of the Defence Act. The Tribunal therefore has jurisdiction to conduct the review.

¹ Submission 112 to the Valour Inquiry by Mr C. Reid (son of Mr Reid) dated 27 June 2011 and Submission 139 by Mr J. Abernethy (a Lance Corporal in Mr Reid's section during the contact) dated 14 September 2011

² DCA OCA/OUT/2015/R22243724 to Mr Reid dated 16 June 2015

³ Application for Review of Decision by Mr Reid dated 14 January 2017

⁴ 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.

5. As the matter under review is a defence honour, pursuant to s110VB(1) of the Defence Act, 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

6. In accordance with its *Procedural Rules 2011*, the Tribunal wrote to the Secretary of the Department of Defence on 2 February 2017, informing him of Mr Reid's application for review and requesting a report on the material questions of fact and the reasons for the decision made in relation to Mr Reid's application.⁵ The Tribunal also requested that the Secretary provide copies of documentation relevant to the *reviewable decision* and a copy of Mr Reid's service record.

7. In response, the Tribunal was provided with a 'desktop assessment' of Mr Reid's application by the Director General Personnel – Army (DG Pers-A) dated 28 April 2017, to the effect that there was no evidence of maladministration and no new or compelling evidence in Mr Reid's submission.⁶ The DG Pers-A included an observation that 'it would be appropriate for Mr Reid's application to be submitted to the Historical Honours and Awards Review Board (the Board) for consideration'.

8. On 4 May 2017 the Directorate informed the Tribunal that Army 'are not questioning the actions of Mr Reid' but could find no evidence of maladministration or new evidence.⁷ The Directorate indicated that Army and Joint Operations Command had decided to ask Mr Reid to make an application for the VC so that it could be considered by the Operational Honours and Awards Board for the Australia Day 2018 Honours List.⁸ The Directorate stated that Mr Reid had 'declined to submit the required paperwork' and 'would leave it up to the Tribunal to award him the VC'.

9. The Directorate noted the Army suggestion that the matter be reviewed by the 'recently established' Board which had been convened for the *Inquiry into recognition for Far East Prisoners of War who were killed while escaping or following recapture*.⁹ The Directorate asked that the Tribunal provide an extension of time to convene the Board. While the Tribunal welcomed the involvement of the Board in being able to aid Defence's decision-making, it did not consider it appropriate that the hearing be delayed while the matter was referred to a Board which had yet to be established. Consequently, on 24 May 2017, the Tribunal advised the Directorate that it was prepared to allow Defence until 31 July 2017 to convene the Board and report as to the

⁵ Tribunal DHAAT/OUT/2017/034 to Secretary dated 2 February 2017

⁶ DG Pers-A /OUT/2017/AB31058659 to the Directorate dated 28 April 2017

⁷ Directorate DH&A/OUT/2017/0090 to the Tribunal dated 4 May 2017

⁸ E-mail Major Rutherford to Mr Reid dated 09.44am 21 March 2017

⁹ Directorate DH&A/OUT/2017/0090 to the Tribunal dated 4 May 2017

outcome of its considerations, but that the matter would nonetheless be scheduled for hearing on 12 September 2017.

10. Subsequent to his application for review, Mr Reid wrote several letters and e-mails. For example, on 5 February 2017 he objected to information provided by the Tribunal's Secretariat regarding responsibility for gathering witness statements and evidence to support his application and urged the Tribunal to compel witnesses.¹⁰ On 3 April 2017 Mr Reid sent a lengthy e-mail to the DG Pers-A, which was copied to the Tribunal, complaining about the processes used in the consideration of his application, commenting unfavourably on previous decisions by the Tribunal and criticising members.¹¹ None of this correspondence assisted the Tribunal in addressing the substantive issues before it in respect of the application.

11. The DG Pers-A letter and attached Army Report (the Army Report) of 28 April 2017 were forwarded to Mr Reid and he provided his comments on the documents in a letter to the Tribunal dated 11 June 2017.¹² He was critical of the Army Report for omitting his achievements and for 'painting [him] as a malingering Lance Corporal'. Mr Reid also went to considerable length to correct what he perceived to be errors in the Army Report. In the Tribunal's view, most of his comments were immaterial, however the Tribunal noted that he highlighted one comment regarding the sighting of enemy at 2200 hours which he asserted "proves" that the total amount of time he was tending to Private Cooper¹³ was spent in the presence of the enemy.

12. Mr Reid emphasised that in the letter Defence had conceded that:

*The actions of PTE Reid on 30 April 1970 are not in question ...*¹⁴

13. On 17 July 2017, Mr Reid wrote to the Tribunal urging it to approach Major General O'Brien, the author of the 1996 publication *Conscripts and Regulars; With the Seventh Battalion in Vietnam* ('*Conscripts and Regulars*'), to obtain material which had been provided to him by Mr John Abernethy for the book. Mr Reid and Mr Abernethy said that Major General O'Brien had been contacted on numerous occasions and had not provided the material which they asserted provided the basis for the entry in the book regarding Mr Reid's actions. Mr Reid implied that this material would in some way negate the need for reconstructed 'citations'. The Tribunal contacted Major General O'Brien who stated that any material he had used had been subsequently handed to the Australian Defence Force Academy library for storage. The Tribunal's approach to gain the material from the library was unsuccessful. In any event, the

¹⁰ Letter from Mr Reid to the Tribunal dated 5 February 2017

¹¹ E-mail from Mr Reid to Brigadier Wilton dated 3 April 2017

¹² Letter from Mr Reid to the Tribunal dated 11 June 2017

¹³ The soldier who Private Reid tended on 30 April 1970

¹⁴ Ibid. p.8

Tribunal considered that it had sufficient evidence before it in order to reach its decision.

14. On 26 July 2017, the Directorate advised the Tribunal that a ‘merits review’ of Mr Reid’s case by the Board could not be completed by 31 July 2017 as the Board ‘is currently in the process of being established’ and ‘the draft Terms of Reference are with the Chief of Defence Force’. The Directorate advised that Defence would however attend the hearing on 12 September 2017 and ‘answer questions’.

15. The Tribunal noted that in accordance with its *Procedural Rules 2011* the hearing would be conducted in public and accordingly, Mr Reid was invited to provide evidence at the hearing held in Canberra on 12 September 2017.

16. The Tribunal itself contacted several witnesses who were named by Mr Reid in his submission, to invite them also to provide evidence. Written accounts of the action were provided by Mr Abernethy who was the acting Section Commander of 7 Platoon’s 2 Section and an eye witness to the contact; Mr Peter Lloyd, another member of 2 Section and one of the soldiers wounded in the action; and Mr Michael Berry, another of the wounded soldiers. The Tribunal recognised that giving evidence may cause some distress and therefore decided not to seek further oral evidence from some of the witnesses. Sadly, Mr Cooper has since passed away.

17. Mr Abernethy attended the hearing and gave evidence. Evidence was given by telephone by Colonel Geoffrey Skardon who had been Mr Reid’s Company Commander and Mr Michael Hughes, who had been Mr Reid’s Platoon Commander.

18. The Respondent was represented at the hearing by Colonel Griffith Thomas, assisted by Major Phil Rutherford. Defence did not elect to call any witnesses, nor did it ask witnesses any questions when invited to do so.

Eligibility Criteria for Gallantry Awards

19. **Contemporary Gallantry Awards.** Australian service personnel received honours and awards under the Imperial system until February 1975 when the Government introduced the Australian system. The two systems – the Imperial and the Australian - then operated in parallel until October 1992 when the Government announced that Australia would no longer make recommendations for Imperial awards.¹⁵ The eligibility criteria for gallantry awards in the Australian system are governed by Regulations. Each of these awards is made by Instrument signed by the Governor-General, on the recommendation of the Minister.

¹⁵ Prime Minister of Australia Media Release 111/92 dated 5 October 1992

20. **The Victoria Cross for Australia.** The VC was established by Letters Patent on 15 January 1991 to be:

*the highest decoration for according recognition to persons who, in the presence of the enemy, perform acts of the most conspicuous gallantry, or daring or pre-eminent acts of valour or self-sacrifice or display extreme devotion to duty.*¹⁶

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

Conditions for award of the decoration

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

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

*according recognition to members of the Defence Force and certain other persons who perform acts of gallantry in action.*¹⁷

23. 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.*

Mr Reid's Service Record

24. From the Army Report, Mr Reid's service record states that he enlisted into the Australian Regular Army (ARA) on 3 September 1968 for a three year period.¹⁸ He was allocated to the Royal Australian Infantry Corps and after initial training was posted to the 7th Battalion, the Royal Australian Regiment (7 RAR). Mr Reid deployed to South Vietnam as a rifleman in 1 Section, 7 Platoon, Charlie Company on 16 February 1970.¹⁹

¹⁶ Commonwealth of Australia Gazette No. S25 – Victoria Cross Regulations– dated 4 February 1991

¹⁷ Commonwealth of Australia Gazette No. S25 – Gallantry Decorations Regulations - dated 4 February 1991

¹⁸ Report Concerning Eligibility for the VC for Private Reid dated April 2017, p.2

¹⁹ Application for Review of Decision by Mr Reid dated 14 January 2017, p.5

25. In addition to his role as a rifleman, Mr Reid was also appointed as the 'platoon medic'.²⁰ The Tribunal understands that stretcher-bearers or 'platoon medics' were generally riflemen who were trained in first aid and basic medical procedures to enable them to conduct casualty stabilisation and assist in the evacuation of injured or wounded soldiers from the battlefield.

26. Mr Reid returned to Australia on 10 March 1971 and on completion of his period of enlistment he transferred to the Australian Army Reserve. He re-enlisted into the ARA on 19 March 1974 and served until 1983 when he was discharged.

27. The Army Report records that Mr Reid was awarded the following:

- Australian Active Service Medal 1945-75 with Clasp 'VIETNAM';
- Vietnam Medal;
- Australian Defence Medal;
- Republic of Vietnam Campaign Medal;
- Infantry Combat Badge; and
- Returned from Active Service Badge.

Background to the Contact on 30 April 1970 (the contact)

28. In April 1970, 7 RAR were involved in a taskforce operation in Phuoc Tuy province. Individual companies of 7 RAR were deployed by foot into their respective areas of operation to conduct reconnaissance and ambush likely enemy routes. On 30 April 1970, 7 Platoon, Charlie Company was tasked with establishing an ambush in the vicinity of the village of Phuoc Loi. The platoon was commanded by Lieutenant M.M. Hughes. During the establishment of the ambush, the platoon made contact with a group of seven enemy and an intense exchange of gunfire ensued. A number of soldiers were wounded and one killed during the contact.

Official Records of the Contact

29. The Contact/Incident After Action (Contact Report) submitted by Lieutenant Hughes described the contact as follows:

The platoon was in the process of setting up a night ambush after a night move of 1,000 metres. The coverman for a section commander who was setting up claymores moved forward to a bund in the paddy when he detected seven enemy crouching behind the bund observing the platoon's activities. Once he had detected the enemy he fired his weapon (SLR) at the first enemy at a range of three feet. The gun groups

²⁰ Ibid.

supporting him immediately opened fire and both he and his section commander withdrew successfully into the ambush position. The enemy was engaged with two GPMGs,²¹ several rounds of 90mm RCL²² splintex and assorted small arms fire from two groups. The enemy returned fire with AK 47 and RPG. At this stage an AK 47 round struck an M26 grenade and adaptor attached to a weapon in the centre group. The subsequent explosion resulted in one Australian KIA and four wounded. The enemy then withdrew and the Australian casualties were evacuated by DUSTOFF. At approximately 2200 hrs one enemy was sighted through a Starlight Scope approaching a body on the paddy bund and was engaged at a range of about 75 metres as he attempted to drag the body away. Due to heavy clouds and light rain the Starlight Scope became ineffective and a sweep in the morning revealed no bodies.²³

30. The Contact Report records the engagement commencing at 2040 hours with the firefight lasting for 13 minutes.

31. The 7 RAR Operations Log records the following relevant transmissions on the Task Force Command net²⁴:

Ser 57 2055 *S/By Dustoff*
Ser 58 2055 *Contact C/S31 Gr 487570*
Ser 59 2100 *S/By Gunships for C/S31 contact, 1 KIA – 3 Aust WIA*
Ser 61 2106 *Enemy now heading toward Hoi My*
Ser 62 2108 *Dustoff Request' 3 WIA, one with gunshot wound to neck, one with wound to arm and one with wound to leg.*
Ser 71 2139 *Dustoff trying to contact you on your frequency ...*

32. The first indication of the contact on the Battalion Command Net is a transmission at 2103 hours when the Battalion Command Post informed the other rifle companies that the firing they can hear is 'contact with our C/S 31'.²⁵ At 2158 hours Charlie Company sent a Situation Report regarding the contact to the Command Post.²⁶

Historical Account of the Contact

33. **The Official History.** The contact is briefly mentioned in the Official History, *Fighting to the Finish: The Australian Army and the Vietnam War 1968-1975*²⁷ and is drawn from the Contact Report, the 7 RAR Commander's diary for June 1970 and *Conscripts and Regulars*. The Official History states:

²¹ General Purpose Machine Guns

²² Recoilless

²³ AWM95 Item 7/7/44, 7RAR Narrative, Annexes 1-30 June 1970, p.98

²⁴ AWM95 Item 7/7/39, 7RAR Duty Officer's Log Task Force Command Net 1-30 April 1970

²⁵ AWM95 Item 7/7/38, 7RAR Duty Officer's Log 20-30 April 1970, p.9 30 April 1970, Ser. 119

²⁶ Ibid. Ser. 122

²⁷ Ashley Ekins with Ian McNeill, *Fighting to the Finish: The Australian Army and the Vietnam War 1968-1975*, Allen and Unwin in association with the Australian War Memorial, 2012

*...on the evening of 30 April, as 7 Platoon, C Company was setting up a night ambush, a group of enemy was seen observing them. In the ensuing firefight at close range and in pitch dark, an AK47 round struck an Australian soldier's grenade and adaptor on the muzzle of an SLR. It exploded, killing Private Henry Stanczyk and wounding four other soldiers. One Viet Cong was killed in the brief contact.*²⁸

34. There is no specific mention of Private Reid in the Official History.

35. **7 RAR History.** *Conscripts and Regulars* also records the contact.²⁹ Extracts state:

...the evening became pitch black, with visibility restricted to about 2 to 3m. 7 Platoon was setting up its night ambush in open padi 1km west of Phuoc Loi after it had moved about 1000m. Private Brian Webb, who was covering his section commander (Corporal Terry 'Rags' Halcroft) as he placed the claymores, saw seven enemy crouching behind a bund observing the ambush. He fired on the enemy at a range of 1m. Corporal Halcroft was pinned down by enemy fire and was only able to crawl back to the ambush after the application of extensive covering fire. The enemy were engaged with rifle, machine gun and 90mm recoilless rifle splintex ... The enemy returned fire with AK47s and RPGs. Private Peter Lloyd described the situation as being caught in the killing ground of a Viet Cong force. One AK47 round struck an M26 grenade and its adaptor on a rifle and exploded it. The explosion caused the death of Private Henry Stanczyk and wounded Private Noel 'Pop' Cooper, Private Peter Lloyd, Private Michael 'Chuck' Berry and Bombardier Dave Drummond (from the artillery forward observer party). The enemy withdrew and the casualties were evacuated by helicopter. An hour later, an enemy was seen 75m away approaching and attempting to recover a body. Although he was fired at, further observation by the starlight scope was prevented by heavy cloud cover and light rain. No enemy bodies were found in the morning. It appeared that the enemy had been in single file, had seen 7 Platoon move to its ambush and had frozen in the exposed position in the hope of avoiding being seen ...

There were several acts of bravery in this contact. Private Berry had borne the brunt of the grenade explosion and had been partially blinded by its shrapnel. He remained in position, returning the enemy fire, until he was evacuated. Private Ian 'Flappers' Reid was the platoon medic. He saw that Private Cooper had been wounded in his throat and was bleeding profusely from his jugular vein. He cradled him in an upright position to reduce the blood flow, putting himself between Cooper and the enemy and exposing his back to incoming fire for a prolonged period. His care enabled Private Cooper to survive ...

²⁸ Ibid. p.409

²⁹ O'Brien, M. (1996) *Conscripts and Regulars; With the Seventh Battalion in Vietnam*, Allen & Unwin, Sydney, p.181-182

36. **Mr Reid's Account of the Contact.** In his submission, Mr Reid noted that this was his first contact. He provided his account of the contact:

a short time following the contact being initiated I saw rather than heard what I later knew to be the explosion ... later followed by the call for a 'medic' ... I responded immediately. Though the visibility was 'virtually nil' ... I sprinted towards the call.³⁰

I arrived to find my Platoon Sergeant ... already there ... the most serious of the wounded was Private Cooper. Given the lack of visibility the extent of Coopers bleeding was not evident to me ... my most vivid memory remains my search by touch for his wound and two of my fingers disappearing into the hole in his neck. The immediate treatment required was for pressure to be applied to the wound, and the wound elevated above the heart. Cooper and I were to remain in this position, exposed above the waist, and illuminated by the light of our own artillery flares until the arrival of the DUSTOFF helicopter.

37. In support of his contention that he treated Private Cooper for 39 minutes 'in the presence of the enemy', Mr Reid's submission contained an analysis of the radio log books and the Contact Report. He further stated that 'the firefight had commenced at 2055 hours and ceased some eleven to thirteen minutes later'. Mr Reid pointed to the intensity of the firefight as being borne out by the recorded amount of ordnance expended during the firefight. He also asserted that the firefight had essentially been 'an exchange between the seven enemy' and the 'machine gun group commanded by Corporal Abernethy'.

38. Referring to a sketch map of the ambush site, (reproduced at p. 74 later in this report), Mr Reid submitted that:

Despite my actions in leaving the relative safety of my pit at 'G' to go to the aid of those at 'C' where one man had been killed and three wounded moments beforehand, and remain there for 39 minutes, exposed above the waist; illuminated, my care enabling Cooper to survive; they apparently never met the CO's standard required to join an order of merit that resulted in 56 awards and commendations allotted to 41 members of the battalion.³¹

39. Mr Reid drew upon various unit handbooks and procedures to highlight that he had the choice to remain under cover and not become an additional casualty or to act as he did, whereas his patient, Private Cooper, had no options.

40. The submission also included what Mr Reid described as 'new evidence' – the sketch map of the ambush site which was originally attached to the Contact Report but had been misfiled. He noted that the 'diagram is not without its own issues' and that Colonel Hughes could 'address these inconsistencies'.

³⁰ Ibid. p.7

³¹ Ibid. p.9

41. Mr Reid stated in relation to the awarding of the VC that, in terms of ‘extreme devotion to duty’ in rendering assistance to a wounded comrade, he had found ‘nothing comparable’ with his actions.

42. In support of his claim for the VC Mr Reid summarised his actions as having cared for Private Cooper for a documented 39 minutes, in the presence of the enemy, exposed from the waist above the parapet, refusing available cover from view or from fire, illuminated by the flares of our own artillery; a course of action regarded by the CO as akin to ‘suicide’; disregarding by necessity, a directive, again from the CO, that one should ‘keep under cover’ when treating the wounded; actions that are credited with preserving the life of a fellow soldier; actions described by my former OC as being ‘above and beyond the demands of duty’.

43. He contended that as he had remained there for 39 minutes, this was an example of extreme devotion to duty in the presence of the enemy that ‘clearly meets the criteria for the Victoria Cross of Australia’.³²

Mr Reid’s Submission in Relation to ‘Maladministration’

44. In addition to his substantive claim, in the covering letter to his application for review Mr Reid also asserted that he had been the subject of ‘a manifest injustice’ because his Commanding Officer, in not nominating him for an honour in recognition of his actions during the contact:

*without reasonable excuse abrogated his responsibilities, failed to follow established policy and committed an act of maladministration*³³

45. He also compared his actions to the actions of others in the Battalion who were recognised, suggesting that the Commanding Officer should have been aware of him and his actions and should have made an appropriate nomination. Mr Reid urged the Tribunal to seek evidence from his 7 RAR chain of command and other witnesses of his actions.

Mr Reid’s Oral Evidence

46. Mr Reid said that he was principally a rifleman but had had basic medical training which had included a 5-week course at Holsworthy, learning how to treat injuries such as burns and how to apply splints. As part of the course, he also worked for a month at St Vincent’s hospital in the emergency ward. He could not specifically recall if his training included dealing with gunshot and shrapnel wounds, but assumed that it did.

³² Ibid.

³³ Ibid. p.4

47. At the hearing, Mr Reid invited attention to *Conscripts and Regulars* and selected quotes from the witness statements. The Tribunal informed Mr Reid that it preferred to hear his own account of the contact and he was questioned with a view to establishing the sequence of events during the contact and his part in the action.

48. Mr Reid said that there ‘was an outbreak of hostilities’ but he could not recall seeing muzzle flash or tracer fire. In relation to the time from the initial contact to the explosion, Mr Reid again stated that he could not recall and that he had not heard the explosion but rather saw the flash. He said ‘I saw a round ball of sparks’. He said that relying on the radio log, the explosion could not have occurred more than five minutes before 2055 hours ‘as Sergeant Edmonds had already been to the scene of the explosion and ascertained that there were wounded’ and reported this on the radio.

49. Mr Reid stated that there was a call for ‘medic’ and he responded by running to the scene of the sparks. He said that he ran as quickly as he could to the scene but he could not recall how far it was or how long it took to reach the scene. As visibility was poor, he just ran “towards the sparks”. He said that when he arrived there Privates Lloyd and Berry were firing from behind the cover of the bund. He could not recall if there was illumination at that time. Sergeant Edmonds briefed him on the situation and told him Private Stanczyk was dead and to ‘look to the rest’.

50. Mr Reid said that it was obvious to him that Private Cooper was the most critically wounded of the three as he was ‘the one sitting on the paddy bund and was clearly out of his mind’, whereas the others (Berry and Lloyd) were in firing positions behind the bund, so he assumed they were not seriously wounded. He said that he could not now recall the position in which he found Private Cooper. He said that he ‘could not swear on oath (sic) as to where he (Cooper) was’ and was only able to rely on Mr Berry’s and Lloyd’s account that Cooper was ‘sitting on the bund’. He said it was so dark that he felt, rather than saw, Private Cooper’s wounds and, he said, to the best of his knowledge once he arrived at the scene, he did a ‘fingertip search of Cooper and found a hole in his throat’. He was not sure if there was illumination at the time but recalled he was unable to see the actual wound.

51. Mr Reid was asked about Mr Berry’s comments that he, Berry, had attempted to pull Cooper behind the bund but that Cooper had resisted. Mr Reid did not recall if he tried to pull Cooper off the bund and speculated that he did not do so because his training was to the effect that the wounded should not be disturbed, so he had left him in that position. He referred to the 7 RAR Soldier’s Field Handbook which stated that when dealing with casualties:

do not disturb a wounded man unless you have to – let him sit or lie in the position he finds most comfortable – keep under cover, you help nobody by getting yourself killed or wounded.

52. He also said that he did not attempt to drag Private Cooper to cover as he understood from his training that the best way to treat a serious wound to the neck was to elevate the head above the heart and apply pressure to the wound to reduce the blood flow, which is what he did, maintaining pressure on the wound with his hand and later using a shell dressing.

53. After further questioning, Mr Reid concluded that he did not know why he made no attempt to drag Private Cooper into cover. In any event, he said that Private Cooper was a big man, whereas he, Reid, at the time, weighed only 65 kgs and, 'he would have been in all likelihood too strong' for him. He said though, that if he had left Private Cooper on the bund and taken cover himself, as the Soldier's Handbook suggested, Private Cooper would have died. He said that he thought the 'desire to treat [his] patient overcame any other desire'.

54. In treating Private Cooper on top of the bund, he said that he also remained exposed above the bund. He said that he later learned that he had his back to the enemy. When asked if there were enemy rounds impacting around him or on the bund, Mr Reid said that he did not know. He said that he could not see any fire around him 'as [he] was facing the wrong way' and '[he] was concentrating on Private Cooper'. He stated that he was not aware that he was under fire whilst tending to Private Cooper as he [Reid] had his back to the enemy and was unable to see any fire. He said that his focus was on keeping Private Cooper alive.

55. In relation to how long he was under 'direct enemy fire' and whether it was for 39 minutes, Mr Reid stated that he 'was not exposed to direct fire for that period'. He said he had his back to the enemy and, relying on the radio logs which said that the report of wounded was made at 2100 hours, and that at 2106 hours the enemy were reported to be withdrawing, he 'imagined that was the end of the enfilade gunfire on our position' and therefore the end of the direct fire exposure.

56. Mr Reid briefly discussed the dust-off mission and his role in getting Private Cooper aboard the helicopter and briefing the pilot about his condition. He said that he wanted to reinforce the messages in the witness statements regarding the supposed disengagement of the enemy and the extant threat as recounted to him by Sergeant Edmonds and the fear Edmonds experienced when signalling the helicopter.

57. Mr Reid explained that he had calculated his '39 minutes in the presence of the enemy' as commencing when the contact was reported at 2055 hours and concluding when the dust-off occurred. He agreed that the report of the enemy withdrawing at 2106 hours was most likely the end of any direct exposure to actual fire although he did remain physically exposed after this and until the casualties were removed.

58. In the course of his evidence, Mr Reid indicated that he had no independent recollection of much of the contact, the threat, or his actions, including what he had done, if anything, for the other casualties. Ironically, he could recall in detail the conversation he had with Private Cooper. He said that he had ‘very few recollections of [his] own’ about his actions and had read *Conscripts and Regulars*. He said that he had only learnt of his actions after the event and as part of the ‘learning process’. He said he was told what he had done by the witnesses when he was preparing his submissions. In answer to the Tribunal’s questions, for example, he could not recall, who was in his gun pit and, when he heard gunfire, he did not know where the gunfire was coming from; he could not recall how far he had run from his gun pit to where the wounded were; he did not know how long there had been gunfire before he heard the explosion, but thought it was unlikely to have been more than 5 minutes; he did not know who had called ‘medic’, but deduced it was Sergeant Edmonds.

Other Eye Witness Accounts of the Contact

59. **Mr Berry.** Mr Berry was a rifleman in the ambush party and was carrying rifle grenades; he stated that he had the spigot adapter and ballistite cartridges to enable him to fire the grenades from his weapon and he was wounded when an enemy round detonated one of the grenades. He stated that a firefight started as the platoon was setting the ambush.³⁴

60. He said that:

... our pit was taking incoming rounds, I had fired three grenades towards the enemy position. The fourth grenade detonated whilst attached to my rifle. I have no idea as to the timing of the following.

When I came to I was facing the wrong way, I was unable to see properly, had a massive ringing noise in my ears and I couldn’t work out what the warm sticky stuff was I was aware of a lot of incoming rounds.

When I turn around to face my front I found Private Stanczyk dead. Private Cooper who was wounded was on top of the paddy bun (sic). I attempted to pull Private Cooper off the bun over Private Stanczyk’s body. Private Cooper was far too strong for me every time I attempted to pull him off the bun he forced himself up, I have no idea as to how long it took for Private Reid and other to get to us.

*...
Private Reid sat up on the paddy bun ignoring the incoming rounds holding Private Cooper in an upright position. I could not understand why Private Reid made no attempt to drag Private Cooper and himself off the paddy bun into cover.*

61. **Mr Lloyd.** Mr Lloyd said that he was a rifleman in 2 Section and was in a weapon pit with Private Stanczyk, Private Berry and Private Cooper.³⁵ He was ‘the member who carried the Energar (sic) Grenades’ and recalled that Private Berry was

³⁴ Statement by Private Michael Berry dated 26 June 2017

³⁵ Statement by P.W. Lloyd dated 31 July 2017

carrying an M16 Armalite Rifle 'with a magazine loaded with ballistite rounds to launch the grenades'. He said that the four of them were lying in a line three metres from the track and facing it. He said that he and Cooper were separated from the other two by a 'paddy bun (sic) approximately 30cm high and 50cm wide with a further paddy bun to the front of the pit'. He stated that:

I was returning from laying out the comms cord to platoon headquarters ... when Private Webb initiated the contact with the enemy to my immediate right ... I went to ground ... and crawled to my firing position. Once back in my firing position, Private Cooper, who was approximately 1 metre to my right indicated to me [the enemy] ... at the same time I observed Private Berry who was in an upright position placing the Rifle Launched Grenade on the barrel of his M16 and firing the Energa Grenades to the north and north east. Private Berry was only about 75cm to my left on the western side of the paddy bun that separated us.

Then there was a flash of light approximately 75cm from my head and I felt a burning and stinging in the left side of my face, left hand, right wrist, back and buttocks ... I was stunned momentarily by the explosion to my immediate left and was totally unaware of what had actually happened.

When I came to my senses ... I looked across at Private Berry and saw that Private Berry's Armalite barrel was peeled back like a half-eaten banana. I looked to my immediate right and heard Private Cooper, who was at this time right beside and touching me, making gurgling noises from his throat and in the light from the artillery flares ... I observed that he had been hit in the throat and his blood was spurting all over me.

Sergeant Edmonds then appeared and told me that Private Stanczyk was KIA and Private Berry was wounded. Platoon Medic Private Ian Reid had also arrived at our position and was attending to Private Cooper.

In the light from flares I saw Private Reid sitting in an upright position, approximately 1 metre to my right, with his back fully exposed to the incoming enemy fire with Private Cooper's head in his lap protecting Private Cooper with his own body.

Private Reid remained in this position until the arrival of the Dust Off helicopter some 30 minutes later ...

62. **Mr Edmonds.** Mr Edmonds was the Platoon Sergeant of 7 Platoon. He stated that after the first exchanges of fire 'an enemy bullet (green tracer) from an AK47 rifle struck the M26 fragmentation grenade attached to the rifle of Private Berry and exploded.'³⁶ He said:

The platoon medic Private Ian Reid and I ran to the group of four soldiers at the source of the explosion. Those in the group were Privates Noel Cooper, Michael Berry, Peter Lloyd and Henry Stanczyk, all casualties. Whilst I did a check of the group, Ian attended to Noel who had been shot in the throat and bleeding profusely. He cradled him in his arms in a sitting upright position to reduce the blood flow, putting them both in a vulnerable exposure to incoming enemy fire.

...

³⁶ Statement by Mr D. Edmonds dated 7 July 2017

During the fire fight, enemy incoming fire was spread along the north and east side of the platoon position, rather than concentrated on the area of the wounded. It's understandable every member of 7 Platoon under fire during the contact regarded themselves as being in immediate danger of being shot. Ian's instinctive reaction to protect, treat and comfort Noel was a major factor in his survival. He displayed personal qualities during the engagement which I observed and his commendable performance received the respect of all soldiers of the platoon. His behaviour was reported but not rewarded ...

63. He also wrote that after Private Berry was wounded by the explosion he continued returning fire from behind the bund until evacuated.

64. **Mr Abernethy.** Mr Abernethy said that his section 'was foremost in the ambush killing ground when contact was made with an enemy force – at least seven enemy were encountered as the ambush was being laid'.³⁷ He stated:

... during the fire fight an explosion to my immediate left, some four metres away, went off in the pit of Privates Berry, Lloyd and Stanczyk. Berry and Lloyd sustained shrapnel wounds and Private Stanczyk received a fatal wound to the head.

The medic, Private Reid was called. Whilst still under incoming fire Reid moved forward through open paddy to attend the wounded.

...

During this intense incoming fire I took cover and glanced behind to see what supporting fire, or damage, lay behind me. Illumination was now being provided by artillery from Horseshoe – with this lighting I could see only one figure – that of Private Reid.

Although at the time I was unaware of who else had been wounded I could see Private Reid supporting someone in his arms under treatment – Reid was exposed from the waist up with his back to the incoming barrage of AK's and RPG's.

Nobody was returning fire during this intense and rapid onslaught from the enemy's position – enemy tracer was all around Reid ...

Private Reid was in my view all during this exchange, which lasted for a very prolonged period. Each time the illumination was there I saw Reid exposed and couldn't understand why he hadn't sought cover – or how he hadn't been hit.

I later learnt that he was cradling Private Noel (Pop) Cooper in his arms and keeping him elevated from a wound to his jugular vein (throat). Had Cooper been laid down below the paddy bund he would have most certainly bled to death.

...

65. **Mr Abernethy's Oral Evidence** Prior to giving his oral evidence, Mr Abernethy provided a document which he described as a 'running sheet' of the action.³⁸ During the hearing Mr Abernethy gave a compelling and detailed eye witness account which was consistent with his written statements.³⁹

³⁷ Statement by Mr W.J. Abernethy dated 14 September 2011

³⁸ 'History of Contact – 30/4/1970' by Mr Abernethy dated 10 September 2017

³⁹ Oral Evidence by Mr Abernethy on 12 September 2017

66. Mr Abernethy said that he was an acting section commander. During the set-up of the ambush, he and Private Webb were outside the perimeter siting claymore mines in front of the machine gun when Private Webb saw, and fired on, an enemy soldier at very close range. He said that they crawled back to the machine gun as quickly as they could so that they were not between the gun and the enemy. He said the gun then commenced firing and he could see enemy being hit at approximately 16 metres. He said that not long afterwards he saw a grenade detonate behind the enemy and shortly thereafter he heard and felt the pressure wave from another explosion only five to seven metres to his left. He said that he then heard a cry for 'medic' and at that time, the enemy 'really hooked in'. He said that he thought that the call for the medic had come from either Private Berry or Private Lloyd.

67. Mr Abernethy said that he could see people at the scene of the explosion to his left but not clearly, as there was no illumination, other than from tracer fire. He said that the illumination commenced a few minutes later. He said that he and his section were under intense enemy fire and rounds were impacting all around them. He said that the machine-gun was returning fire in 50-60 round bursts and he was firing his rifle on fully automatic. He said that the machine-gun started to overheat and stoppages were occurring requiring barrel changes. At that time, he thought the section may have been over-run as he knew his rifle group had been taken out of action and the gun was not functioning properly. He knew there were casualties but did not know who was wounded.

68. He said that he looked back over his shoulder and saw Private Reid sitting on the paddy bund with his back to the enemy fire, exposed from the waist up with his lower torso being protected by the paddy bund but the rest of him above the bund; he could see Private Reid's ammunition pouches. He said, 'I wondered what the hell he was doing'. He thought he yelled to Private Reid to 'get down' but he (Reid), would not have heard amidst the gunfire. He said that after about ten minutes and with the illumination now being fired, and the enemy fire having diminished, he looked back and was able to see Private Reid, silhouetted, 'treating the wounded'. He said that although he was unable to see the casualty, he thought Reid must have been cradling a soldier in his lap and he found out afterwards, probably from Sergeant Edmonds, that it was Private Cooper and that Private Reid had actually been holding Cooper's head in his lap.

69. He said that he was the only person looking in the same direction as the enemy as the fire was coming over his head in the general direction of Private Reid. He said that he could therefore see the green tracer. Mr Abernethy said that the fire for the first ten-minute period was extremely intense and that he was amazed that Private Reid was not hit. Mr Abernethy was of the view that the enemy fire was concentrated in his general area as the enemy knew that the machine-gun was there and was the biggest

threat to them in the early stages of the engagement. In response to Mr Edmonds' view that the weight of fire was not directed towards the casualties, Mr Abernethy stated that that 'was not correct, it definitely was'.

70. Mr Abernethy said that during the contact he was 'scared stiff' and he was worried that the enemy fire at the outset was so intense that they 'would be over-run'. He said that he 'couldn't believe what Mr Reid did – he was fully exposed and exhibited great bravery which deserved to be recognised'.

71. Mr Abernethy said that on the morning after the contact he had told Lieutenant Hughes what Private Reid had done because Hughes did not see anything of Reid during the firefight. He said he told Lieutenant Hughes that Private Reid 'was a bloody hero - he was fully exposed through the bulk of the firefight and had kept Cooper elevated and alive', and he asked if he could 'put Reid up for a bravery award'. He said that he believed that by telling Lieutenant Hughes that he (Hughes) would then mention Private Reid's actions in his Contact Report.

72. Mr Abernethy said that he also discussed recognition with Major Skardon a few days later who advised him to 'take it up with Lieutenant Hughes'. He assumed that because he had previously raised it with Lieutenant Hughes, that would suffice.

Witnesses in the Chain of Command

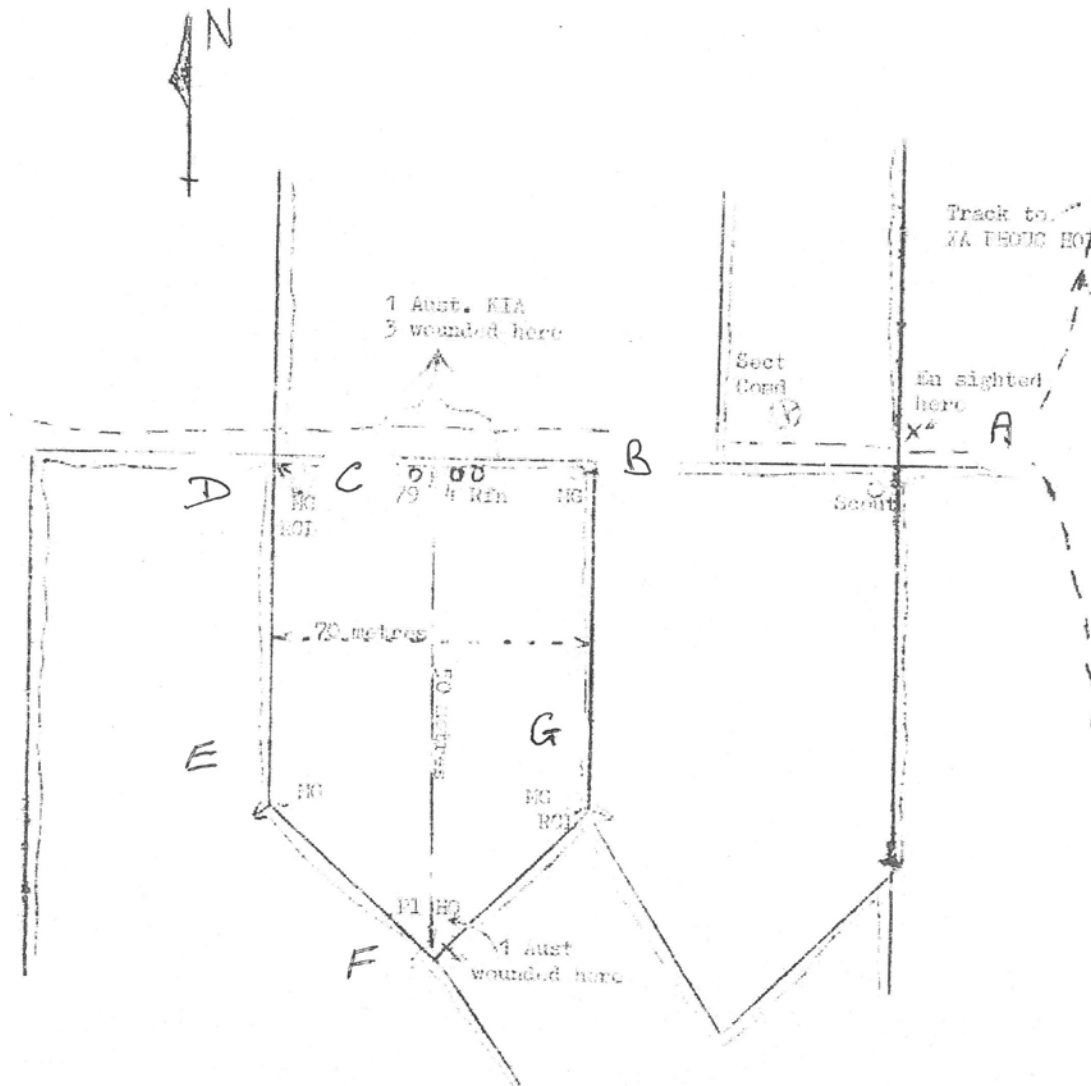
73. **Colonel Hughes.** Colonel Hughes was an experienced platoon commander at the time of the contact, having been commanding 7 Platoon since June 1969. On 19 August 2017, he provided the Tribunal with a detailed account of the action.⁴⁰ He stated that he was 'conscious of the efflux of time since the events of 30 April 1970'. He also stated that to the best of his memory, the sequence of events and actions taken by members of the patrol were substantially consistent with Mr Reid's account and also with that recorded in *Conscripts and Regulars*, a publication to which he had not been asked to contribute.

74. Colonel Hughes stated that the 'minor inconsistencies' in various records 'are not substantive enough to cast doubt on Reid's accounting of the actual events'. He also said that in relation to the location of individuals and weapon systems annotated on the diagram attached to the Contact Report⁴¹; that the diagram was 'roughly accurate'.⁴²

⁴⁰ Statement by Michael Montgomery Hughes dated 19 August 2017

⁴¹ Attachment B3 to Application for Review of Decision by Mr Reid dated 14 January 2017

⁴² Ibid. p.2, Para 8



75. The following is Lieutenant Hughes' account of the contact:

On initiation of the contact, my immediate concern was on organising covering fire against the enemy in order to allow the section commander, Corporal Halcroft⁴³ and the section scout Private Webb to safely withdraw to the main position. Sustained covering fire was directed principally from the gun group Position B on the annotated diagram with supporting fire from the machine gun group at position G. Most of the enemy's fire was concentrated along the axis from positions A to D although some fire was directed at position G once the machine gun group at that position started to engage the enemy.

My follow up plan of attack was that once Halcroft and Webb had recovered to the main position, I would direct heavy suppressive fire on the enemy in the vicinity of position A, principally from the machine gun group, the RCL team and the supporting rifle group at position G, with continued fire from the machine gun group at position B and to use the Platoon Headquarters group at position F and the machine gun and rifle groups centred on position E to sweep around to the south east of position G and

⁴³ The Tribunal notes that Colonel Hughes refers to Corporal Halcroft however the evidence suggests that it was actually Lance Corporal Abernethy who was the acting section commander on the night.

conduct a fire and movement assault under artillery illumination to the north against the enemy in the vicinity of position A.

To the best of my memory, it was shortly after Halcroft and Webb regained the main position that the explosion in the vicinity of position C caused the death of Private Henry Stanczyk and the wounding of Privates Michael Berry, Peter Lloyd and Noel Cooper.

Immediately after the explosion, the platoon sergeant Dennis Edmonds moved to position C, reported the extent of the casualties and called for the medic Private Ian Reid who moved rapidly from position G to the site of the casualties. I was confident that both Edmonds and Reid could competently handle the treatment and evacuation of the casualties and directed my full attention to fighting the battle.

My immediate focus was then switched to attempting to drive the enemy from the contact in order to clear the area to allow helicopter evacuation of the wounded from the adjacent paddy field to the west of positions D and E. I instructed the artillery forward observer ... to continue the illumination mission and moved forward to the machine gun and RCL position at position G to direct machine gun and RCL splintex fire, the later having proven in earlier encounters as being quite effective in encouraging the enemy to disengage.

Once the enemy had withdrawn from immediate contact, my focus was then on ensuring that the enemy did not return to the ambush site and endanger the Dustoff mission or cause it to be aborted.

When I was confident that the enemy had fully disengaged and were of no immediate concern to the Dustoff mission I returned to position F and directed the continued illumination mission and surveillance to the east and south until the Dustoff mission was completed.

76. Colonel Hughes stated that he was not able to provide ‘unequivocal eye witness confirmation’ of Mr Reid’s or Mr Abernethy’s account concerning the extent and duration of Reid’s exposure to enemy fire principally because his entire focus during the action was on combating the enemy.⁴⁴ However he wrote, in relation to Private Reid’s actions during the contact:

While I did become aware at some time during the contact that Reid was in an exposed position, it was difficult to ascertain exactly the degree and duration of his exposure because of the distance between Reid’s location at position C and mine at positions F and G, the extreme darkness, the night vision blinding caused by muzzle flashing and tracer fire and the uncertain and wavering light generated by the artillery illumination rounds in the prevailing light drizzle.

77. Colonel Hughes also addressed whether there had been a formal recommendation for Private Reid for a defence honour. He stated that the day after the contact the Company Commander, Major Skardon conducted a debrief with him and the Platoon Sergeant, Sergeant Edmonds and during the discussion mention was made by Sergeant Edmonds of Reid’s cool and courageous conduct in tending to the wounded and, in particular, Private Cooper.

⁴⁴ Ibid. p.3, Para 15

78. Colonel Hughes said that his understanding of policy regarding nominations for honours and awards within the Battalion was that ‘when a conspicuous action was reported to have occurred, the Commanding Officer would appoint an officer ... to interview witnesses and provide a written report’. He said that apart from the debriefing he did not recall being interviewed by any officer concerning Reid’s actions and that he was not aware whether Sergeant Edmonds was interviewed either. He stated that he was not aware of any written recommendation being raised for a Defence Honour for Private Reid.

79. In his statement Colonel Hughes also addressed Mr Reid’s assertions regarding ‘maladministration by the Commanding Officer’. He dismissed the assertions pointing out that at the time of the action, the Company was actually under the operational control of the Task Force headquarters. He also pointed out that there was nothing in the body of the Contact Report which might have turned the Commanding Officer’s mind to a recommendation of Mr Reid for a defence honour.

80. Colonel Hughes concluded that in relation to Private Reid’s actions:

I consider that his cool and courageous actions in tending to Private Noel Cooper’s wounds undoubtedly contributed to Cooper’s survival and subsequent recuperation. In my view, Reid’s actions were worthy of the best traditions of the Royal Australian Regiment.

81. On 7 September 2017 Colonel Hughes provided a response to written questions posed by the Tribunal, a copy of which was provided to Mr Reid and Defence.⁴⁵ Colonel Hughes indicated that he was not able to provide details of the timings during the action as he was not focussed on his watch during the contact. He recommended the Tribunal review the ‘relevant operations log’ for actual timings. He provided a sequence of events which was consistent with his previous statement and, when considered in conjunction with the operations log, pointed to the explosion involving the spigot grenade occurring at some time just before the warning for a ‘Dustoff’ at 2055 hours and the cessation of the direct enemy fire being proximate to the report of the enemy ‘withdrawing towards Phuoc Hoi’ at 2106 hours.

82. Colonel Hughes stated that he was ‘unable to state with any accuracy the actual period when fire was brought to bear directly in the vicinity of Mr Reid and the casualties’.⁴⁶ He also stated that:

In the early part of the contact, much of the enemy fire was directed towards the MG group at position B which would have meant that enemy fire could have endangered anyone in an exposed position along the axis A to D [the location of the casualties]
...

⁴⁵ Statement by Michael Montgomery Hughes dated 7 September 2017

⁴⁶ Ibid. p4, para 11(a)

as the contact developed and as the MG Group and the RCL at position G became more engaged (and the MG Group at position B was experiencing stoppages), the bulk of the enemy fire seemed to be directed towards position G [to the south of the casualties]

83. In relation to the threat, Colonel Hughes said that during the initial exchange of fire, the threat was ‘relatively high as the enemy was well armed ... and determined to fight hard to counter the fire from the ambush position while extracting its casualty/casualties’.⁴⁷ He said that:

I do not believe there was any threat of an assault by the enemy as it would have become quickly evident to the enemy commander that he was outnumbered by a force with considerably more firepower at its disposal ...

The level of enemy threat diminished markedly once the area was lit ... particularly as the enemy began to withdraw ...

At no time was I concerned that the patrol would be overrun or defeated ... the patrol was well dispersed, was well balanced in its MG group dispositions, was well armed, was well trained and its battle discipline was good ...

84. As to why Colonel Hughes had not nominated Mr Reid for recognition, he wrote:

*... I was not directed to provide a statement in support of a bravery citation during or at any time following the post patrol debrief with OC C Coy ...*⁴⁸

85. In relation to whether Mr Reid’s actions warranted the award of the VC, Colonel Hughes said that he had ‘read the citations for the four VCs awarded for service in South Vietnam (Badcoe, Payne, Simpson, Wheatley)’ and could not see ‘equivalence’ in the claimed actions of Mr Reid. Furthermore, he considered that ‘the Commanding Officer was, and still is, in the best position to decide on the relative merits of any recommendations for recognition of gallantry’.

86. **Colonel Hughes’ oral evidence.** Colonel Hughes said he has no reason to question the account provided by Mr Reid and others. During the contact, he said, he was aware that there were casualties but he was not aware of Mr Reid’s actions, although he knew that Sergeant Edmonds and Private Reid were taking care of the wounded. In his view, as the number of enemy was seven and there were 24 in his company, at no time, were they at risk of being overrun.

87. He said that he could not recall a conversation with Lance Corporal Abernethy about Private Reid. He said that the purpose of the debrief with Major Skardon the following day was a technical discussion about the tactics that had been employed. There was some discussion about Private Reid but he could not recall the specifics; but

⁴⁷ Ibid. p5, para 14

⁴⁸ Ibid. p.5, para 17

it was only then, he said, that he learnt about Private Reid's actions. He said he thought Sergeant Edmonds had mentioned it to Major Skardon.

88. He said that the Contact Report was probably drafted at Battalion Headquarters from hand-written notes he had provided sometime after the action. He was of the view that these reports were for technical analysis; he did not think they were the avenue to raise nominations for recognition, hence there was no mention in the Contact Report of Private Reid's actions.

89. In relation to belated recognition for Mr Reid, Colonel Hughes said that he did not have a view and that it was up to others to make an assessment. He said that he did not disagree with the view of Colonel Skardon regarding recognition. He said that he 'wouldn't have any concerns if someone wanted to pursue recognition for what Mr Reid did on that night'.

90. **Colonel Skardon.** Colonel Skardon was the Officer Commanding Charlie Company (a Major) at the time of the contact, and to whom Lieutenant Hughes reported. He had been the commander for 18 months and had previous operational service in Borneo in 1964 and with the Australian Army Training Team Vietnam in 1965. He was not present at the ambush site and did not witness the contact. He stated that:

*As the Company Commander, I was made fully aware at the time by Lieutenant Hughes of the nature, progress and intensity of the firefight. My headquarters was instrumental in providing all support including casualty evacuation ...*⁴⁹

*... after the completion of the patrol, Lieutenant Hughes expressed complete satisfaction with the manner in which his troops acted during the engagement. He was particularly pleased that each man carried out his individual tasks as he was trained to do ... I gained the impression that the platoon medic, Private Reid, did an excellent job ...*⁵⁰

91. In relation to recognition of Mr Reid at the time he stated that:

*... had Lieutenant Hughes observed or been aware of any particularly noteworthy actions I believe he would have mentioned it here [the Contact Report]. As Lieutenant Hughes made no recommendation for a Defence honour for Private Reid, I made no recommendation to the Commanding Officer ...*⁵¹

92. Colonel Skardon also stated that he had a discussion in early May 1970 with Lance Corporal Abernethy about recommending Private Reid for a Defence Honour.

⁴⁹ Statement by Colonel Geoffrey Skardon dated 23 July 2017, p.2, para.1

⁵⁰ Ibid. p.3, para.4

⁵¹ Ibid. p.2, para.1

He said that he referred Abernethy to Lieutenant Hughes but was unaware if he spoke to him or not.⁵²

93. Colonel Skardon said that he spoke to Mr Abernethy again in 1998 and told him that Mr Reid and others like him ‘were never going to get recognition because the allocation of Defence Honours to battalions was so small’.⁵³

94. Colonel Skardon said that Mr Abernethy also wrote to him in 1998 in relation to nominating Mr Reid for recognition in the End of War List. He said that for the first time he received in writing an eye witness account of Mr Reid’s actions and contacted the Commanding Officer and in turn the Military Secretary ‘who agreed to investigate the matter’. He said that the Military Secretary subsequently informed him that the End of War List was closed and new submissions were not allowed.⁵⁴

95. Colonel Skardon concluded his statement by saying that Mr Reid ‘performed as he was trained to do and did an excellent job’, however the first time he considered recommending him for an honour was in 1998 after receiving written testimony. He said that he was now of the view that consideration should be given for ‘an appropriate Defence Honour’. Colonel Skardon’s proposed citation stated:

*The then Private Reid displayed courage, determination, skill and initiative in tending the wounded. He disregarded his own safety by cradling Private Cooper, who was severely wounded in the neck, in his arms and elevated both himself and Cooper above the available cover to prevent Cooper drowning in his own blood. This action was carried out under heavy fire in close proximity to the enemy.*⁵⁵

96. Prior to the hearing, the Tribunal asked Colonel Skardon to clarify what honour he now thought was appropriate for Mr Reid. In a letter dated 29 August 2017 he stated:

I recommend that the Medal of Gallantry would recognise the significant act of gallantry in action by the then Private Reid in very hazardous circumstances as described by Lance Corporal John Abernathy, section commander and eye witness to the action.

97. **Colonel Skardon’s Oral Evidence** During the hearing Colonel Skardon noted that he had previous experience in nominating soldiers for honours, including one of his Platoon Sergeants – Sergeant Savage who was recommended for, and received, the Military Medal (MM).

98. Colonel Skardon said that he would have been broadly aware of the details of the contact, including the medical evacuation, from the oral debrief the next morning

⁵² Ibid. p.3, para 6

⁵³ Ibid. p3, para.7

⁵⁴ Ibid. p4, para.8

⁵⁵ Ibid. p.6

with the platoon commander as it was a 'fairly big event'. He could not recall if Sergeant Edmonds was present at the debrief.

99. He said he could recall that Lance Corporal Abernethy sought an appointment with him within a few days after the contact and that Abernethy told him that he thought Private Reid deserved recognition. He said he told Lance Corporal Abernethy 'to put it back through his platoon commander who was clearly best placed to observe what happened and if he thought recognition was warranted he would put it in'. He said that he subsequently heard nothing from Lieutenant Hughes and had never discussed the matter with him.

100. He said that if he had known the specifics of Mr Reid's actions in 1970, as detailed to him by Mr Abernethy in writing in 1998, he would:

probably have recommended him for the MM as Reid was quite gallant in his actions, he chose to expose himself for a considerable period of time to enemy fire in the service of his brother soldier ... there is no question he was in hazardous circumstances at close range ...

101. He said that although he thought that the MM may have been downgraded to a Mention in Despatches but nonetheless he would have put him in for a MM.

102. **Major General Grey.** Major General Grey was the Commanding Officer of 7 RAR (a Lieutenant Colonel) at the time of the contact. He had trained the Battalion and had considerable previous operational experience. He stated that he was aware of the contact and somewhat later had read the Contact Report by Lieutenant Hughes.⁵⁶ He noted that there was no comment in the Contact Report concerning Private Reid and it was subsequently neither mentioned or discussed with him. He said that he first became aware of Mr Reid's actions in detail when *Conscripts and Regulars* was published, some 25 years after the tour of Vietnam. He stated that at no time then or later did he consider a defence honour or award for Mr Reid.

Defence's Position

103. In rejecting Mr Reid's application for the VC, DCA indicated that when examining past awards there would be 'no further consideration unless there was a clear case of a failure in due process or maladministration during or after a recommendation had progressed through the chain of command'. DCA wrote that 'unless there is a clear case of maladministration, Army considers it inappropriate to supersede a judgement made by a competent authority that had a much greater understanding of the events ...'. Records showed that Mr Reid had not been nominated for an honour and there was no evidence presented to suggest a failure in due process. DCA concluded that 'in the

⁵⁶ Statement by Major General R.A Grey (Retd) dated 2 July 2017

absence of an approval for the honour or evidence of maladministration', Army would not support his request for recognition.⁵⁷

104. After the application for review of the DCA decision was received, Army conducted a desktop assessment of the application and produced the Army Report. The desktop assessment provided a detailed account of Mr Reid's service history and a compilation of the action taken from various historical records, archival material including war diaries and Mr Reid's own submission.⁵⁸ The account provided a useful narrative but there were several inconsistencies, none of which are considered by the Tribunal to be material.

105. Although there was no assessment of the merits of Mr Reid's actions in relation to the eligibility criteria for relevant honours, the Army Report stated that:

*The actions of PTE Reid on 30 April 1970 are not in question. Evidence in both official records and contemporary literature describing the events relate to PTE Reid moving to an exposed position during an intense firefight to stabilise a wounded soldier and remain with him until medical evacuation could be arranged.*⁵⁹

106. The desktop assessment discussed the operational scale of awards (quota) and concluded that the 'full quota of decorations was not filled'.⁶⁰ It also indicated that if Mr Reid had been nominated for the VC, the nomination was not subject to quota.⁶¹ It affirmed the decision by the DCA and suggested that the matter be referred for a merits review.

107. Despite Army's earlier advice that a merits review of Mr Reid's case could not be undertaken by the Board before the scheduled hearing, Colonel Thomas informed the Tribunal at the hearing that a merits review of Mr Reid's application had in fact been completed on 31 August 2017. As the Board had yet to be established, Army, the Tribunal was informed, had convened a panel (the Defence Panel), of which he was part, to conduct a merits review, having regard to all the material the Tribunal had made available to it in relation to the application, and its own material. Colonel Thomas asked the Tribunal to note that the Defence Panel did not have the benefit of Colonel Hughes's written supplementary evidence, nor 'the benefit of being able to question witnesses when it came to reaching the conclusion [it] had made'. The Tribunal considered this statement to be somewhat specious, especially as Colonel Thomas acknowledged that, as the Respondent's representative at the hearing, he had been afforded the opportunity to question the witnesses, but chose not to do so.

⁵⁷ Ibid.

⁵⁸ Report Concerning Eligibility for the VC for Private Reid dated April 2017, p.2

⁵⁹ Ibid. p.3 para 12

⁶⁰ Ibid. p.5 para 29

⁶¹ Ibid. p.5 para 30

108. The Defence Panel had noted, the Tribunal was informed, that there were inconsistencies in the evidence including the weapon used to fire the spigot grenade, the actual grenade and the movements of various people including the Platoon Sergeant.

109. Colonel Thomas submitted that the movement of Private Reid to the casualties ‘was what normally would be expected of a medic in that situation’. The Defence Panel had concluded, the Tribunal was informed, that ‘Private Reid moved from the depth pit to the location of the rifle group where the main casualties were’. Colonel Thomas said that in relation to the review process, it was acknowledged that the Defence Panel’s ‘degree of certainty and understanding of what had occurred was not significantly high’ but considered that the Platoon Sergeant [Edmonds] appeared to have the best perspective of the action. The Defence Panel was satisfied that ‘the length of the contact was between eleven and thirteen minutes’.

110. The Tribunal was informed that the Defence Panel’s conclusion was that:

the actions of Private Reid on the night of 30 April 1970 and his self-nomination for the VC has little to no merit

111. The Respondent’s position, articulated by Colonel Thomas was that that it did not contest that Private Reid ‘*moved to the position and may have been exposed*’ however its ‘*understanding of the weight of fire and the length of time of the exposure when considered against the criteria for the VC and, whilst noting that Private Reid did display a degree of bravery, [the Defence Panel] did not consider that it had merit*’.

112. In relation to other gallantry awards, Colonel Thomas indicated that the Defence Panel had considered that ‘a lesser award that could have been considered would have been the MID and that whilst that was not available, it would be equivalent to the Commendation for Gallantry, however with the information available to the review [the Defence Panel believed] that there was not sufficient enough evidence for such a nomination to be progressed’. The Respondent’s position, the Tribunal was informed, was that having now heard the additional evidence, it was ‘still of that view’. Colonel Thomas said that:

the knowledge and understanding of the member and the degree of risk that he was placing himself was not fully established by Private Reid until he read the accounts of the action in the official history, that he was not aware of incoming rounds or enemy fire that may have been directed towards his position

113. The Tribunal asked Colonel Thomas what was Defence’s view in relation to spontaneity and conscious decision-making, to which he said that:

the act of gallantry requires the member to at least have an understanding of the danger or the circumstances under which they are taking their actions or making decisions ... if a person is not aware of the dangers then I do not think they can be displaying gallantry.

TRIBUNAL CONSIDERATION

114. The Tribunal is required to review decisions ‘on the merits’ and this requires an examination of the merits of the matter in dispute rather than the lawfulness of the decision under review.⁶² The merits review necessitates consideration of the evidence and accordingly, the Tribunal conducts an independent review, and considers afresh the relevant facts, law and policy.⁶³ 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.⁶⁴ The Tribunal is bound to make what it regards as the ‘correct and preferable’ decision.

115. **Maladministration or New Evidence.** There was no dispute that Mr Reid had not been nominated for any honour. Mr Reid’s contention was that he had been the subject of ‘a manifest injustice’ because his Commanding Officer did not nominate him for an honour in recognition of his actions on 30 April 1970 and therefore ‘failed to follow established policy and committed an act of maladministration’.⁶⁵

116. Defence’s position was that no nomination could be found in the records and that there was no evidence of maladministration.

117. The Tribunal noted Mr Reid’s assertions in comparing his actions with those of others in the Battalion who were recognised, suggesting that the Commanding Officer should have been aware of him and made an appropriate nomination. The Tribunal also noted his claim that his actions ‘apparently never met the CO’s standard required to join an order of merit that resulted in 56 awards and commendations allotted to 41 members of the battalion’. The Tribunal noted that Major General Grey addressed this issue when he stated:

*In this regard the slur by Reid of the Catering Corps Sgts, both of whom did considerable base area patrolling and other tasks in addition to their normal duties is unworthy of him and not characteristic of soldiers of the Regiment ... as to an abrogation of my responsibilities as CO without reasonable excuse, I find such an accusation offensive in the extreme*⁶⁶

118. The Tribunal did not accept that comparisons were a valid method of establishing the benchmark for a particular award; each matter is considered on its merits.

119. The Tribunal noted that Mr Reid was not mentioned in the Contact Report and both Colonel Skardon and Major General Grey gave evidence that they did not

⁶² *Council of Australian Tribunals Practice Manual* dated 7 April 2006 p.1.3.1.2

⁶³ Pearson, Linda, “Merit Review Tribunals”, in Creyke, Robin and McMillan, John, *Administrative Law – the Essentials*, AIAL 2002, p. 68

⁶⁴ *McDonald v Director-General of Social Security* (1984) 1 FCR 354

⁶⁵ *Ibid.* p.4

⁶⁶ Statement by Major General R.A. Grey dated 2 July 2017

nominate Mr Reid for recognition and were not aware of his actions until many years later. The Tribunal asked Mr Reid during the hearing if he had revised his views of the Commanding Officer's role in the matter given he now knew that the Commanding Officer was not made aware of his actions until 25 years later. The Tribunal noted that Mr Reid continued to espouse his view that this was not possible and that he could not accept that the Commanding Officer could not have known.⁶⁷

120. The Tribunal, having considered the evidence by Colonel Skardon and Colonel Hughes was satisfied that the Commanding Officer was not aware of the action in any detail as it had never been raised by his subordinates.

121. Further, the Tribunal concurred with the Army submission that failure to nominate an individual could not be construed to be maladministration, as the nomination process is a discretionary one.

122. Mr Reid also claimed that the sketch map of the ambush site which was misfiled constituted new evidence. The Tribunal considered that whether the sketch map was new evidence or, indeed, whether there was maladministration, was irrelevant as the Tribunal is bound, in applying the eligibility criteria, to conduct a merits review of Mr Reid's actions. Accordingly, the Tribunal turned to an assessment of the merits of the actions against the eligibility criteria for gallantry decorations.

Gallantry Assessment

123. In conducting the merits review the Tribunal reviewed the applicant's claims and submissions and all the available evidence. As all the gallantry awards, including the VC, require an 'act of gallantry', only if the Tribunal were able to find such an act would it be able to proceed to consider the appropriate honour. If so satisfied, in the first instance, the Tribunal would then assess the actions of Mr Reid against the eligibility criteria for the VC, the claimed honour.

124. Mr Reid claimed in relation to the VC that he could find '... nothing comparable to his actions'.⁶⁸ As to what comparisons he had made of other actions, he told the Tribunal that he had compared the citations of 28 individuals who had been awarded the VC since the commencement of World War Two and that from these he had formed his opinion. He conceded that he would not compare himself to the recipients 'in every respect'. He said that these were examples of individuals who had shown extreme devotion to duty and that he had read 'nothing on those citations that would compare to my actions'.

⁶⁷ Oral Evidence by Mr Reid 12 September 2017

⁶⁸ Application for Review of Decision by Mr Reid dated 14 January 2017, p.17,

125. The Tribunal asked Mr Reid, if he had specifically compared similar actions involving stretcher-bearers during the Vietnam campaign, and indicated that it was aware of other Vietnam stretcher-bearers who were recognised with the award of the MM, for example Private Odendahl from 6 RAR during Operation Bribie. Mr Reid said that he was not aware of this and doubted that any individuals had ‘exposed themselves to the enemy from the waist up for 39 minutes’ as he had done.

126. The Tribunal formed the view that Mr Reid’s attempt to compare his actions to other VC recipients was ill-founded. Each matter is unique - involving different circumstances and occurring when exposed to different levels of threat and complexity. For this reason, the Tribunal rejected Mr Reid’s claims in relation to comparison with other VC recipients, as the Tribunal is required to decide matters based on individual eligibility as determined by the conditions for the award of the decorations as declared in the Instruments, Regulations and Determinations for each particular honour. Eligibility is determined in each matter according to its own facts.

127. The Tribunal noted that during his closing submission, Mr Reid indicated that he had in fact reviewed 15 Private soldiers who had received the MM and that in his view, this equated to the MG and that he would be ‘very proud to be a part of that select group’, and that he had previously informed Defence of that concession.

128. **What is Gallantry?** The Tribunal noted that all the gallantry decorations, including the VC accord recognition for individuals who perform acts of gallantry ‘in action’. Whilst ‘in action’ is a relatively straightforward concept, ‘gallantry’ is an abstract term, which is not defined in the Regulations. Various dictionary definitions such as ‘dashing courage; heroic bravery’⁶⁹; and ‘courageous behaviour, especially in battle’⁷⁰, are largely circuitous and unhelpful. Some countries have attempted to differentiate between ‘bravery’ and ‘gallantry’; defining the latter as recognition of military personnel who carry out acts which put their lives at risk while involved in operational service; whilst ‘bravery’ is defined as saving or attempting to save the life of another person in the course of which they place their own life at risk.⁷¹ Again, this is largely unhelpful in defining gallantry in the context of the Australian Honours system.

129. The Tribunal considered that there is an expectation that soldiers in battle, conducting themselves in accordance with their training, will be acting bravely. The Tribunal considered that ‘gallantry’ requires a higher standard of conduct than bravery and that usually a special element of courage, fearlessness, daring or heroism will have been demonstrated. What amounts to an ‘act of gallantry’, necessarily varies according to the individual circumstances of each action, and depending on many factors,

⁶⁹ The Macquarie Dictionary on-line accessed 20 February 2017

⁷⁰ The Oxford Dictionary on-line accessed 20 February 2017

⁷¹ <http://medals.nzdf.mil.nz/category/d/index.html>

including the level of threat, the person's training, role and responsibility, the risk to the individual and/or the group, and the consequences of undertaking, or not undertaking, the particular act.

130. Mr Reid submitted in relation to any contention that he merely 'was doing his job' or 'doing what he was trained to do', that his job, according to the Soldier's Handbook, was primarily to look after himself, and that, had he remained in the available cover, or merely dragged Cooper behind that cover and waited for the helicopter, in all likelihood, Private Cooper would have bled to death.

131. In his closing submission, Mr Reid said that he had been involved in the process since 2011 and was disappointed with the Defence view regarding retrospectivity. He said that despite Defence admitting that he had displayed bravery, it did not even raise the possibility of a Commendation for Gallantry.

132. Before coming to its view in relation to 'gallantry' the Tribunal addressed the contact and Mr Reid's actions.

Findings in Relation to the Contact

133. Relying on Mr Reid's written and oral evidence, eye witness accounts, and the Contact Report, the Tribunal was satisfied that on the evening of 30 April 1970 Mr Reid, a trained stretcher-bearer, was part of a 24-man platoon fighting patrol that made contact with seven enemy soldiers during the set-up phase of a platoon ambush. At the time of the contact it was 'pitch black' and all involved were in extremely close proximity. There is some doubt as to the actual time of the first contact – either 2040 hours according to the Contact Report or 2055 hours according to the radio log.

134. The Contact Report recorded that the enemy was armed with small arms and grenades. Although outnumbered, the enemy may have had, at least at the commencement of the contact, the advantage of surprise. This advantage quickly diminished when the firepower of the platoon was brought to bear on the enemy's position. A few minutes after the initial engagement, however, the platoon experienced a significant setback when an AK 47 round struck an M26 grenade and adaptor attached to a weapon carried by Private Berry. The resulting explosion resulted in one member of the platoon being killed and at least three wounded. Further, the section machine gun, according to Mr Abernethy, became overheated and subsequent stoppages required numerous clearances and barrel changes.

135. Lieutenant Hughes, in the Contact Report placed the withdrawal of the enemy immediately after the explosion in the gun pit. However, this is inconsistent with the other available evidence that they remained under fire following the explosion. Mr Abernethy's evidence was that after he heard a cry for 'medic' the enemy fire

intensified. Lieutenant Hughes' evidence, on the other hand, was that 'as the contact developed the bulk of the enemy fire seemed to be directed towards position G' [to the south of the casualties]. Sergeant Edmonds also considered that during the firefight, the enemy incoming fire was spread along the north and east side of the platoon position, rather than *concentrated* on the area of the wounded. It is not clear how long the engagement lasted, however there is general agreement that the firefight lasted for approximately 11-13 minutes - the Contact Report recorded 13 minutes, and Mr Reid also accepted that 'the firefight commenced at 2055 hours and ceased some eleven to thirteen minutes later'. On balance, the Tribunal prefers the evidence that the firefight continued following the explosion. Even if the fire was not *concentrated* on the area of the wounded, the unchallenged evidence of Mr Abernethy was that the incoming fire at that time was 'intense', and the evidence of Mr Lloyd and Mr Berry was of continued incoming fire after Private Reid commenced attending to the wounded. The Tribunal finds that, after Private Reid reached the wounded, he remained exposed to fire, even if the fire was not *concentrated* on those in or near the gun pit or the casualties.

136. Mr Abernethy's evidence was that he thought his section may have been overrun. Sergeant Edmonds considered that it was reasonable that every member of 7 Platoon under fire during the contact regarded themselves as being in immediate danger of being shot. Colonel Hughes on the other hand, said that he did not believe there was any threat of an assault by the enemy because they were outnumbered by a force with considerably more firepower. At no time was he concerned that the patrol would be overrun or defeated. He observed that the level of enemy threat diminished markedly once the area was lit. The evidence was equivocal as to when illumination may have occurred, but it appears that, for at least some of the time, the area was in almost complete darkness. In coming to his view, Colonel Hughes noted that the patrol was well dispersed, and was well balanced in its dispositions, was well armed, was well trained and its battle discipline was good.

137. The Tribunal accepts that, while objectively, there may have been little likelihood of a successful assault by the enemy and that the platoon performed well, members of the platoon, especially those in or near the gun pit and the casualties remained in a position of considerable danger until the withdrawal of the enemy.

138. According to the reports, the enemy withdrew, probably in the direction of Hoi My. At 2108 hours the radio log indicates that the platoon formally requested the helicopter evacuation of three wounded soldiers. This suggests that, at that time, the area was no longer under direct enemy fire. It is unclear when this evacuation was effected, however the radio log suggests that the helicopter was in the vicinity of the patrol at 2139 hours when it tried to establish communications on the company radio net. Also, Mr Lloyd said that the Dustoff helicopter arrived 'some 30 minutes later' which suggests that the evacuation occurred close to 2139 hours.

139. **Private Reid's Actions.** There are some inconsistencies in the various witness accounts as to the exact sequence of events leading to Private Reid's presence at the scene of the explosion. However, it was clear that Private Reid moved from his position at the rear of the ambush site whilst still under incoming fire to attend to the wounded. The Respondent did not dispute that this was the case.

140. Sergeant Edmonds, who the Respondent said was in the best position to give an account of what occurred, also attended the scene of the explosion and confirmed Private Reid's account that Private Cooper had been 'shot in the throat and was bleeding profusely'. Sergeant Edmonds said that Private Reid had cradled Private Cooper in his arms in a sitting upright position to reduce the blood flow, exposing them both to incoming enemy fire. Mr Lloyd also corroborates the account, saying that he saw Private Reid sitting in an upright position with his back fully exposed to enemy fire with Private Cooper's head in his lap protecting Private Cooper with his own body. Mr Abernethy's evidence also corroborates Mr Reid's account that he was exposed to enemy fire for approximately ten minutes with his back to the enemy.

141. **Findings in Relation to Mr Reid's Actions.** The Tribunal was reasonably satisfied that the following facts are established relating to Mr Reid's actions on 30 April 1970:

- a. although he was a rifleman, he was the 'platoon medic' and was trained as a stretcher-bearer;
- b. following the grenade explosion and a cry for 'medic', he instinctively and immediately moved from his position towards the rear of the ambush to the scene of the explosion;
- c. his movement was while under enemy fire;
- d. he stabilised Private Cooper who had been shot in the throat, applied a pressure bandage to the wound and elevated his head in accordance with his training;
- e. he was exposed to the enemy's fire for approximately ten minutes while he tended to Private Cooper;
- f. he tended to Private Cooper after the withdrawal of the enemy until the arrival of the evacuation helicopter approximately 30 minutes later.

Did Mr Reid's Perform an 'Act of Gallantry in Action'?

142. To be eligible for any Australian gallantry award, the Tribunal would need to be reasonably satisfied that Mr Reid had performed an 'act of gallantry in action'. There is no dispute that the events of 30 April 1970 occurred while Private Reid was 'in action'.

143. Private Reid's platoon was exposed to direct enemy fire for at least ten minutes and he, in particular, was threatened by enemy fire when he moved forward to the site of the explosion. He was also exposed to enemy fire whilst tending to Private Cooper.

144. The threat to Private Reid at the commencement of the contact was similar to all members of the platoon as, at that time - they were all under fire and as they were not dug in, they all shared a common risk – direct enemy fire protected only by small paddy bunds.

145. When Private Reid heard the cry for 'medic' his response was instinctive and he made a conscious, albeit immediate, decision to move forward. Whilst the Respondent was of the view that because Mr Reid was unable to recall the specifics of his response, he could not be gallant, the evidence was not in dispute, somewhat incongruously, that he was under fire when he was moving forward.

146. The Tribunal considered that the risk to Private Reid at the scene of the casualties was high and he could have dragged Private Cooper to cover behind the bund, but he chose not to do so. The method he chose to treat Private Cooper meant that he himself was exposed to the enemy from the waist up. The Tribunal accepts that he was in this position and the enemy was firing in his general direction for approximately ten minutes although the accuracy and effectiveness of this fire is questionable. There was also some doubt as to how long Private Reid was exposed to fire whilst tending to Private Cooper as by his own account he could not recall being under fire. The evidence of all the eyewitnesses, however, was that he remained exposed to fire while tending Private Cooper. The Tribunal was satisfied that he had placed himself into a position of increased risk, compared to other members of the platoon, in the interests of his patient.

147. The Tribunal accepts that the consequences of Private Reid not doing what he did was that there was a likelihood that Private Cooper would have bled to death if he was dragged into cover and his head was not elevated.

148. Most witnesses, including Defence, conceded that Private Reid displayed bravery.

149. **Finding in Relation to Gallantry.** The Tribunal was satisfied that Private Reid's reaction to the call for 'medic' was spontaneous and that during his treatment of Private Cooper he consciously accepted danger in the interests of Private Cooper. Whilst he was bravely doing what he was trained to do as the platoon medic, the Tribunal gave great weight to the fact that this was his first contact and that while he had options to avoid danger, he chose to expose himself to greater risk to save his patient. The Tribunal finds therefore that Private Reid performed an act of gallantry in action on 30 April 1970 when he consciously moved forward under fire to treat a

seriously wounded soldier, and remained exposed to enemy fire whilst treating that soldier.

The Appropriate Honour

150. Having found that Private Reid performed an act of gallantry, the Tribunal turned to an assessment of his actions against the eligibility criteria for the gallantry awards. Mr Reid said that he had told the Respondent months before the hearing that he did not want the VC, only the MG.

151. For completeness, the Tribunal commenced its consideration of the appropriate honour by examining his eligibility for the VC, the honour the subject of his original claim and the subject of the reviewable decision.

152. **The VC.** The Tribunal noted that the eligibility criteria for the VC requires *‘the most conspicuous gallantry, or a daring or pre-eminent act of valour or self-sacrifice or extreme devotion to duty in the presence of the enemy’*. The Tribunal noted that Mr Reid’s submissions carefully annotated that he was ‘in the presence of the enemy for 39 minutes’. Whilst this may be the case, the Tribunal considered that the phrase ‘in the presence of the enemy’ related directly to the threat and the risk to the individual. Whilst the enemy may have been in the area of the ambush, the Tribunal was more concerned with identifying if Private Reid was actually under fire and if he was, what the effectiveness of that fire was and concomitantly, what the risk was to Private Reid.

153. Although Mr Reid did not recall much of what he had done until he was apprised of his actions by others, he claimed that his actions were an example of extreme devotion to duty. The Tribunal was satisfied that Private Reid did his duty as a medic – he was trained to treat the patient and was expected to react when called. The Tribunal did not consider that, in those circumstances, his actions were ‘extreme’. Accordingly, it could not be reasonably satisfied that his actions could be considered as ‘extreme devotion to duty’.

154. While the Tribunal accepts that Private Reid was under fire when he went forward and was also exposed to enemy fire while he treated Private Cooper, the Tribunal could not be satisfied that his actions were of the very highest degree, such as is contemplated by the eligibility criteria for the VC.

155. **The SG.** The Tribunal noted that the SG *‘shall be awarded only for acts of great heroism or conspicuous gallantry in action in circumstances of great peril’*. The Tribunal previously established that the threat to the platoon during the contact was high but, objectively, they were not in ‘circumstances of great peril’. The enemy was significantly out-numbered by the platoon and the platoon had considerably greater firepower including a recoilless rifle and several machine-guns. Whilst Mr Abernethy

gave evidence that he considered that there was a *possibility* of his section ‘being over-run’, this is not borne out by the evidence of the platoon commander, Lieutenant Hughes.

156. Similarly, whilst Private Reid was under fire when he moved forward to the casualties and was exposed to the enemy while treating Private Cooper, the Tribunal was unable to establish the effectiveness, if any, of the enemy fire in Private Reid’s vicinity. There was also no evidence of further casualties following the explosion. Therefore, it did not consider that Private Reid was in ‘circumstances of great peril’.

157. The Tribunal therefore finds that his actions do not satisfy the eligibility criteria for the SG.

158. **The MG.** The eligibility criteria for the MG specify that the MG ‘*shall be awarded only for acts of gallantry in action in hazardous circumstances*’.

159. Mr Reid highlighted that Colonel Skardon had given evidence that the MG was an appropriate gallantry award for his actions. Mr Reid stated that he had examined those Private soldiers who had received gallantry awards and ascertained that 15 of them received the MM. He acknowledged this was a different award to the MG but he submitted that it could be considered to be similar.

160. ‘Hazardous circumstances’ is not defined. In *Soldier J and the Department of Defence (Soldier J)*, the meaning of ‘hazardous circumstances’ was discussed in some detail. That Tribunal reviewed documentation relating to the drafting of the Regulations, in particular, a recommendation⁷² that in respect of the MG, the originally proposed words ‘in perilous circumstances’ should be changed to ‘in hazardous circumstances’. The letter making this recommendation provided dictionary meanings of ‘hazardous’ and ‘perilous’. Roget’s Thesaurus suggested ‘dangerous’, ‘fraught’, ‘treacherous’ and ‘risky’ as synonyms for both words as well as ‘hazardous’ for ‘perilous’ and vice versa. The definitions from the Macquarie Concise Dictionary suggested ‘full of or attended with peril; hazardous; dangerous’ for ‘perilous’ and ‘risk; exposure to danger of harm; a potential source of harm, injury, difficulty etc.’ for ‘hazardous’. The Tribunal looked itself to current dictionary definitions for assistance⁷³ but these were equally circuitous, in repeating the elements of risk and danger.

161. The Tribunal in *Solider J* concluded that the term ‘hazardous circumstances’ was intended to take into account the particular circumstances of a soldier in action and requires that the hazardous circumstances be relevant to a combat situation. The Tribunal agrees with this interpretation.

⁷² HQADF Minute SPP1387/90 of 12 November 1990, ADF Awards for Gallantry in Action, DGSP Aspects, File DM/86/17391

⁷³ Macquarie Concise Dictionary and Oxford Concise Dictionary

162. The Tribunal in *Soldier J* found that the applicant had been exposed to circumstances that were ‘dangerous but not hazardous’.⁷⁴ The Tribunal considered that whilst such a finding was open to the Tribunal in that matter, the approach served to highlight the difficulty in attempting to define ‘hazardous’ and in differentiating between that term and ‘dangerous’.

163. The Tribunal in *Soldier J* also found, at [55], that Soldier J had not been exposed to danger that was greater than that to which the rest of the platoon had been exposed. However, the present Tribunal considered that it could never be an absolute requirement that, to be eligible for a MG, an applicant must be exposed to greater danger than those around him. Having said that, the Tribunal acknowledges that greater danger is likely to be a feature of the actions of a recipient of the MG.

164. The Tribunal was satisfied that Private Reid’s whole platoon was exposed to dangerous circumstances from the commencement of the contact. The danger to the platoon decreased somewhat, at least temporarily, when the platoon established its firepower supremacy. However, that advantage was very likely to have been lost following the explosion which killed one and wounded three others - not only were the platoon numbers depleted, but at least Private Reid, and to a lesser extent, Sergeant Edmonds, were taken up with the care of the wounded. In addition, the section machine gun was experiencing heat-related stoppages and Private Berry’s weapon had been rendered inoperable.

165. The Tribunal was satisfied that Private Reid was exposed to fire when he moved forward to the wounded, as was at least one other member of the platoon, Sergeant Edmonds, who also moved forward to assess the casualties. Similarly, Lance Corporal Abernethy and Private Webb were also under fire when they withdrew back to their positions after the initial contact.

166. There was no clear evidence that while tending the casualties, the enemy fire was *directly focussed* on Private Reid and Private Cooper. The evidence of Mr Abernethy, Mr Lloyd and Mr Berry was that they remained under fire during the period Private Reid was tending Private Cooper. Mr Abernethy’s evidence was that the enemy fire in fact intensified. The Tribunal has found that Private Reid was exposed to danger and was exposed to the enemy while he was treating Private Cooper. Even if this danger was reduced if the weight of enemy fire had switched to the south and more so, when the enemy began to withdraw, the preponderance of the evidence was that Private Reid, and those at the scene of the casualties, remained exposed to fire, even if it were not *concentrated* on them. Further, even on the most conservative estimate, the evidence was that he was exposed to fire, above the bund, for no less than six minutes. Even if the Tribunal were to accept that it is a requirement that the danger to which a

⁷⁴ DHAAT 27/2014 *Soldier J and the Department of Defence* dated 4 July 2014 at [55]

person is exposed is greater than that of the other members of the platoon, it was clear that Private Reid, in positioning himself above the bund, was at a risk greater than the other members of the platoon. The Tribunal is therefore of the view that the danger to which Private Reid was exposed was greater than the danger to which the rest of the platoon was exposed. Although the evidence was unclear as to the length of time he was in that position, he, and he alone, was exposed to that degree of danger. The Tribunal accepted that Private Reid was personally in danger whilst tending Private Cooper.

167. The Tribunal in *Soldier J* expressed, at [53] a requirement, to the effect, that notwithstanding the soldier [applicant] and others were in hazardous circumstances, *nonetheless* the soldier proceeded to engage in an act of gallantry.

168. This raises an issue of whether, in this case, it is a requirement that Private Reid *consciously* assumed an additional risk during the course of tending Private Cooper.

169. Mr Reid now, some 47 years after the incident, has no independent recollection of much of what occurred during his treatment of Private Cooper, although paradoxically, he could recall in detail the conversation he had with Private Cooper. In particular, he could not recall if he was under fire while tending Private Cooper. However, he recalled that when he arrived at the scene of the casualties, Privates Lloyd and Berry were firing from behind the cover of the bund. This is consistent with Sergeant Edmonds account that, notwithstanding his injuries, Private Berry continued returning fire from behind the bund until evacuated.

170. On balance, the Tribunal accepts that, as Private Reid had run to the gun-pit under fire, and had observed Privates Lloyd and Berry firing from behind the bund, he was aware they were under fire and likely made a sub-conscious decision to accept additional risk in his treatment of Private Cooper. The Tribunal accepts his unchallenged evidence that his focus was on keeping Private Cooper alive.

171. Having considered all of the evidence, the Tribunal finds that Private Reid's circumstances were hazardous as required by the Regulations and, having found that he had performed acts of gallantry in action, he therefore meets all of the eligibility criteria for the MG.

TRIBUNAL DECISION

172. The Tribunal decided to recommend to the Minister that:

- a. the decision by the Deputy Chief of Army to not support Mr Ian Reid's request for the award of the Victoria Cross for Australia for his actions as a

Platoon Medical Assistant during a platoon ambush near the village of Phuoc Loi in South Vietnam on 30 April 1970 be set aside, and

b. the Minister recommend to the Governor-General that Mr Ian Reid be awarded the Medal for Gallantry for acts of gallantry in action in hazardous circumstances as the Platoon Medical Assistant with 7 Platoon, Charlie Company, 7th Battalion, The Royal Australian Regiment during a platoon ambush near the village of Phuoc Loi in South Vietnam on 30 April 1970.