



## Australian Government

### Defence Honours and Awards Appeals Tribunal

#### **Wilkins and the Department of Defence Re: Band [2016] DHAAT 29 (12 August 2016)**

**File Number(s)** 2015/032

**Re** **Commander John Wilkins, OAM, RFD, RANR (Retd)** on behalf of **Lieutenant Commander John Band RANR(S) (deceased)**  
Applicant

**And** **The Royal Australian Navy** on behalf of **the Department of Defence**  
Respondent

**Tribunal** Mr Mark Sullivan, AO (Presiding Member)  
Brigadier Mark Bornholt, AM (Retd)  
Air Vice-Marshal John Quaiife, AM (Retd)

**Hearing Date** 21 June 2016

#### **DECISION**

On 12 August 2016 the Tribunal decided to recommend to the Minister that the decision by the Chief of Navy to not recommend Lieutenant Commander John Band, RANR(S) for the award of 'the Victoria Cross for outstanding service in the Royal Australian Navy in World War Two' be affirmed.

#### **CATCHWORDS**

DEFENCE HONOUR – *Victoria Cross* – *Gallantry Decorations* – *World War II* – *Royal Australian Navy* – *Finschhafen* – *Naval Beach Party*

#### **LEGISLATION**

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

## REASONS FOR DECISION

### Introduction

1. The Applicant, Commander John Wilkins OAM, RFD, RANR (Retd) (Commander Wilkins) seeks review of a decision by the Chief of Navy (CN) to not recommend Lieutenant Commander John Band for the award of the Victoria Cross (VC) for 'outstanding service in the Royal Australian Navy in World War Two'. Lieutenant Commander Band was mortally wounded during an amphibious assault near Finschhafen, New Guinea on 22 September 1943. For his actions Lieutenant Commander Band was posthumously awarded the United States Navy Cross (Navy Cross) but did not receive an Australian gallantry award.

2. On 24 June 2011, Commander Wilkins made a submission to the Tribunal's *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour* (the Valour Inquiry) seeking that Lieutenant Commander Band be awarded the VC:

*'...for outstanding heroism as Officer-in-Charge of a Naval Beach Party in the landing at Japanese occupied Finschhafen, New Guinea on 22 September 1943...'*<sup>1</sup>

3. On 14 March 2013 the Australian Government referred the submission to the CN through the Chief of the Defence Force for consideration. On 23 September 2014 CN, acting on advice contained in a decision brief based upon a review conducted by Doctor David Stevens, referred the submission back to the Tribunal via the Parliamentary Secretary to the Minister for Defence (the Parliamentary Secretary).<sup>2</sup> The decision brief indicated that there was '... no new or compelling evidence that would warrant a merits review'.<sup>3</sup> On 5 March 2015 the Parliamentary Secretary asked the Tribunal to review the submission.<sup>4</sup> On 30 June 2015, the Tribunal wrote to Commander Wilkins regarding the Parliamentary Secretary's advice and asked whether he would like to proceed with a review of recognition for Lieutenant Commander Band, and invited him to submit further information. In a letter received on 17 August 2015, Commander Wilkins confirmed he would like the review to proceed.

### Tribunal Jurisdiction

4. 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. Included in the defence honours set out in Part 1 is the VC.

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<sup>1</sup> Commander Wilkins ([ausnavyleague@me.com](mailto:ausnavyleague@me.com)) email dated 241703 June 2011

<sup>2</sup> Letter CN/OUT/2014/1259 dated 23 September 2014

<sup>3</sup> Decision Brief for CN dated 9 April 2014, Paragraph (ii)

<sup>4</sup> Parliamentary Secretary to the Minister for Defence MA14-001989 dated 5 March 2015

5. The Tribunal considered that Commander Wilkins' submission to the Valour Inquiry and his subsequent letter of August 2015, constituted an application as defined in s110V(1)(c) and s110VA of the Defence Act. Further CN's referral of the matter to the Tribunal for review on 23 September 2014 constituted a refusal to recommend Lieutenant Commander Band for the VC therefore satisfying the requirements of s110V(1)(a) and (b) of the Act.

6. Therefore the Tribunal has jurisdiction to review decisions in relation to this award. In accordance with s110VB(1) of the Defence Act, as the matter under review is a defence honour, the Tribunal does not have the power to affirm or set aside the decision but may make recommendations regarding the decision to the Minister.

### **Conduct of the review**

7. In accordance with its *Procedural Rules 2011*, on 19 August 2015, the Tribunal wrote to the Secretary of the Department of Defence informing him of Commander Wilkins' request for review and requested a report on the material questions of fact and the reasons for the decision made in relation to Lieutenant Commander Band's eligibility for the VC.<sup>5</sup> The Tribunal also requested that the Secretary provide copies of documentation pertaining to the reviewable decision and that he provide a copy of the relevant service records.

8. Rather than provide a report or the service record as requested, Navy provided the material relied upon by the CN in making his 2014 decision. The material included the report of a review conducted by Doctor Stevens of the Sea Power Centre – Australia into the Navy submissions made to the Valour Inquiry (the Stevens' Review) and supporting briefing papers. Half a page of the report of review related to Lieutenant Commander Band.

9. On 11 November 2015 the Tribunal provided the Navy sourced material to Commander Wilkins for comment. On 18 November 2015 he responded indicating that he was dissatisfied with the material and in particular that he had thought that 'wide ranging research' should have been conducted and that he did not understand the Navy recommendation for taking no further action – 'no maladministration or compelling new evidence'.<sup>6</sup>

10. The Tribunal Secretariat conducted further research into Lieutenant Commander Band's actions and the administration of his awards including the award of the Navy Cross. The research included access to material available in historical records, the National Archive of Australia and official histories. This material was subsequently passed to Commander Wilkins for information.

11. The Tribunal met on 10 March 2016 and considered the material provided by Navy, Commander Wilkins and the Tribunal's own research. The Tribunal confirmed the scope of the review, the decision under review and jurisdiction. The Tribunal also decided to seek advice from the United States in relation to the chain of command for the recommendation for the Navy Cross and to seek advice from the CN regarding the

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<sup>5</sup> Letter, DHAAT/OUT/2015/489 dated 19 August 2015

<sup>6</sup> Commander Wilkins' Letter dated 18 November 2015.

legal standing of decisions and rules made by the Australian Government regarding the granting and acceptance of foreign awards during the Second World War.<sup>7</sup>

12. The Tribunal noted that the Valour Inquiry had addressed the issue of retrospective honours and awards.<sup>8</sup> The Valour Inquiry developed guidelines that would be able to be applied in any later reviews and the Tribunal noted that Doctor Stevens and CN had used this guidance in reaching the recommendation and decision on eligibility for Lieutenant Commander Band.

13. The guidelines suggest that the first step in examining retrospective honours should be the conduct of a review to determine whether due process had been followed. This step should include ‘an attempt to determine whether there is a case of maladministration and whether new evidence has come to light’. The guidelines suggest that if due process had been followed, there was no maladministration, and if there was no new evidence, the original decision should remain unchanged.

14. The guidelines provided that if there was a case of maladministration or if compelling new evidence had appeared that was not available at the time of the original decision, the next step would be ‘the conduct of a merits review’. In conducting the merits review, the Valour Inquiry recommended that consideration be given to the inability to award retrospective honours in the Imperial system and that awards made in the Australian system should be subject to assessment of the evidence relevant to ‘the standards and regulations of the time’.

15. Notwithstanding this guidance, it should be noted that s110VB of the Defence Act requires the Tribunal to undertake a merits review of all reviewable decisions, where an application for review has been properly made. The Tribunal therefore decided to firstly conduct a process review of Commander Wilkins’ claims and, even if a case of maladministration could not be proven, the Tribunal would also conduct a merits review of Lieutenant Commander Band’s eligibility for the VC for outstanding heroism as the Officer-in-Charge of the Naval Beach Party at Finschhafen on 22 September 1943.<sup>9</sup>

16. The Tribunal noted that in accordance with its *Procedural Rules 2011* the hearing into this matter would need to be conducted in public and accordingly, Commander Wilkins was invited to provide evidence at a hearing which was held in Canberra on 21 June 2016. Navy was represented at the hearing by Mr John Perryman, the Senior Navy Historian. Following the hearing Commander Wilkins wrote to the Tribunal seeking clarity on two issues and cautioning the Tribunal against causing ‘diplomatic problems’ with the United States through further questioning of their actions in awarding the Navy Cross.<sup>10</sup> On 14 July 2016 Commander Wilkins also provided an extract from a 2009 publication by Ian Pfenningwerth that he ‘believed provided good background to the matter’ and asked that the Tribunal consider the material.<sup>11</sup>

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<sup>7</sup> Letter, DHAAT/OUT/2016/093 dated 17 March 2016

<sup>8</sup> Defence Honours and Awards Appeals Tribunal, Report of the *Inquiry Into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour* dated 21 January 2013, p91, [8-48]

<sup>9</sup> Commander Wilkins ([ausnavyleague@me.com](mailto:ausnavyleague@me.com)) email dated 241703 June 2011

<sup>10</sup> Commander Wilkins’ letter received on 24 June 2016 – DHAAT/IN/2016/055

<sup>11</sup> Commander Wilkins’ email dated 1428 hours on 14 July 2016

## Lieutenant Commander Band's Service Record

17. Lieutenant Commander Band was born on 22 March 1902 at South Shields, England, the son of a mariner. The family emigrated to Queensland in the 1930s and on 1 September 1939, Lieutenant Commander Band was appointed as an officer in the Royal Australian Naval Reserve (Seagoing). From October 1939 to June 1940 he served in the armed merchant cruiser HMS *Moreton Bay* in Japanese waters. He subsequently served on HMAS *Moresby* and saw action during the Battle of the Coral Sea in May 1942 when serving on the cruiser, HMAS *Hobart*. On 1 October 1942 he was posted to the naval section of the Combined Training Centre near Brisbane. This school instructed Australian and American soldiers and sailors in amphibious warfare. On 4 August 1943 he was promoted and took charge of the mobile base staff organisation at HMAS *Basilisk* in Port Moresby, this posting included responsibility as the Port Director at Buna.

18. Following the capture of Lae in September 1943, the Australian 9<sup>th</sup> Division was ordered to take the Huon Peninsula of New Guinea with one of the objectives being the capture of a Japanese strong point at Finschhafen by amphibious lodgement. The amphibious assault was conducted by two Australian Infantry battalions (the 2/13<sup>th</sup> and 2/17<sup>th</sup> Battalions) carried ashore by American landing craft from 532<sup>nd</sup> American Engineer Boat and Shore Regiment (EBSR).<sup>12</sup>

19. On 22 September 1943, Lieutenant Commander Band was the Beachmaster accompanying the amphibious lodgement. The beach marking team were doctrinally responsible for the placement of markers for the initial landing craft and for the provision of inshore navigation assistance to subsequent waves of landing craft. Sometime shortly after the initial landing Lieutenant Commander Band was mortally wounded. He died the following day and was buried in the field before eventually being interred at Bomana war cemetery in Port Moresby. On 28 March 1945, Lieutenant Commander Band was posthumously awarded the United States Navy Cross for the actions which resulted in his death.<sup>13</sup>

20. Lieutenant Commander Band's Service Record does not indicate what awards he received for his service.

## Lieutenant Commander Band's Actions

21. The only official accounts of Lieutenant Commander Band's actions on 22-23 September 1942 are contained in the Official History and the citation for the award. Several anecdotal accounts were provided by the Applicant quoting his own research and a further account is contained in an article written by Mr John Bradford in the 2007 Australian War Memorial magazine *Wartime*.<sup>14</sup>

22. **The Official History.** The Official History of the Army in the Second World War makes mention of Lieutenant Commander Band in a footnote. It states:

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<sup>12</sup> 'Operation DIMINSH' – 9 Aust Div Operation Order No.15 dated 20 September 1943 – AWM52 1/5/20 Division War Diary September 1943 – B/C 1/5/20-0375

<sup>13</sup> United States Secretary of the Navy Pers 328—jmc prepared 12 July 1944, signed 22 July 1944

<sup>14</sup> John Bradford, *American Hero, Wartime* – Issue 37, January 2007, pp36-38

*‘... from the beginning of the landing the Australian and American “amphibious scouts” (mainly from the 532<sup>nd</sup> EBSR), whose task was to erect beach markers, had attempted to gather on Scarlett Beach from the various positions in which they had been landed by the first wave. The commander of these scouts, Lieut-Commander J.M. Band, RANVR, was mortally wounded while moving north from Siki Cove to the beach. Carrying his equipment to measure depths he floundered into the water, after being wounded, in a desperate attempt to carry out his task.’<sup>15</sup>*

23. **The Official Citation for the Navy Cross.** On 9 January 1945 the United States Minister in Australia provided a copy of the citation signed by the United States Secretary of the Navy on behalf of the President of the United States for the award of the Navy Cross to Lieutenant Commander Band. It states that:

*... repeatedly exposing himself to fierce enemy machinegun and mortar fire, Lieutenant Commander Band valiantly led the first wave of landing forces ashore despite persistent hostile bombing and strafing attacks on our ships and beach objectives. Although fatally wounded during this action, he tenaciously continued to direct the hazardous operations and prevented one group of landing craft from beaching in the wrong area where opposition was extremely heavy. Still carrying on, he finally collapsed and was returned to a field hospital ...<sup>16</sup>*

24. The conclusion to the citation states:

*By his daring leadership and selfless devotion to duty, Lieutenant Commander Band contributed in large measure to the successful completion of a vital mission. He gallantly gave his life in the service of his country.<sup>17</sup>*

### **The United States Navy Cross**

25. The Navy Cross is the second highest military decoration that may be awarded to a member of the United States Navy or Marine Corps.<sup>18</sup> It is awarded for extraordinary heroism while:

- engaged in action against an enemy of the United States;
- engaged in military operations involving conflict with an opposing foreign force; or
- serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

26. ‘Actions that merit the Navy Cross must be of such a high degree that they are above those required for all other United States combat decorations but do not merit

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<sup>15</sup> David Dexter, *The New Guinea Offensives, The Official History of the Army in the Second World War*, Volume VI, Australian War Memorial, Canberra, 1959, p455.

<sup>16</sup> Legation of the United States of America letter to the Australian Minister for External Affairs dated 9 January 1945

<sup>17</sup> Ibid.

<sup>18</sup> <http://valor.defense.gov/DescriptionofAwards.aspx> - accessed 6 April 2016

award of the Medal of Honor. The Navy Cross is equivalent to the United States Distinguished Service Cross (Army) and the Air Force Cross (Air Force)'.<sup>19</sup> Of the 3,654 Navy Crosses awarded during the Second World War, only 17 were made to members of Allied forces including two other Australians – Commodore H.B. Farncomb, CB, DSO, RAN and Captain J.M. Armstrong, DSO, RAN who received the award in 1945.

### **Acceptance of Foreign Awards during the Second World War**

27. In 1942/43 several letters were exchanged between the Commander-in-Chief Southwest Pacific Area, General Douglas MacArthur and the Australian Minister for Defence, John Curtin regarding the granting and acceptance of foreign awards. The exchange concludes with the agreement in the Minister's letter of 16 April 1943 that the procedure for submission of recommendations for United States awards to Australian personnel will be that:

*'The Prime Minister is to be informed of proposed awards and his concurrence obtained before any award is made. This concurrence will normally be given after consultation with the Service Minister concerned'.<sup>20</sup>*

28. The letter also provides principles to be used in considering the acceptance of foreign honours by 'members of British force'. One of those principles is:

*'... posthumous foreign awards will not, as a rule, be accepted ...'<sup>21</sup>*

29. However, the Minister also states:

*'... the principles themselves are not rigid but allow for a reasonable degree of elasticity in providing for special cases ...'<sup>22</sup>*

30. The Tribunal sought advice from Navy regarding the legal standing of decisions and rules made by the Australian Government regarding the granting and acceptance of foreign awards. The Acting Chief of Navy provided advice on 30 May 2016.<sup>23</sup> The advice concluded that:

*'... Navy recommends that the 'rules' contain sufficient discretionary language to permit the award of a British honour in addition to the award of a US honour, should exceptional circumstances so warrant. I am of the view that exceptional circumstances could be applied in the case of the actions of Lieutenant Commander Band, RANR, for a posthumous award'.<sup>24</sup>*

31. In respect of legal standing, the advice stated that:

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<sup>19</sup> Ibid.

<sup>20</sup> Minister for Defence Letter to General MacArthur dated 16 April 1943 – Department of Defence WP008 Honours File No 1 to 30 April 1945

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Acting Chief of Navy Letter, CN/OUT/2016/524 dated 30 May 2016

<sup>24</sup> Ibid.

*‘...subject to any correspondence between Australia and the US after WWII that modified or cancelled the applicable ‘Rules’, they are as politically and morally binding today as they were in 1942’.*<sup>25</sup>

32. The Tribunal was therefore satisfied that there were agreements in place that allowed for the granting of United States awards to Australian service personnel from 1942 and that acceptance of such awards would not preclude the granting of an Imperial award.

### **The Recommendation for the Navy Cross for Band**

33. On 11 March 2016 the Tribunal approached the United States Navy via the Australian Embassy in Washington seeking evidence to support the chain of recommendation for Lieutenant Commander Band’s award of the Navy Cross. A search of records was conducted on 18 March 2016 and documents were recovered which included the report of the landing operation on 23 September 1943 by Commander Task Group 76.4 (the amphibious lodgement Task Group commander).<sup>26</sup> This report was forwarded to the Task Group’s operational commander – Commander United States Seventh Fleet on 15 November 1943 and makes no mention of Lieutenant Commander Band but contains the following statements:

*‘...first wave of LCI(L)’s beached at Scarlett Beach at 0510. Some difficulty was experienced in locating beach due to heavy smoke ... and beach party being late in establishing lights ... four enlisted men were wounded during beaching, none seriously ... three Australian soldiers were slightly wounded from shell fragments ...’*<sup>27</sup>

34. On 26 November 1943 Commander Seventh Fleet, Admiral Carpenter wrote to the United States Secretary of the Navy via the Commander-in-Chief United States Fleet recommending Lieutenant Commander Band for the ‘award of the Navy Cross’.<sup>28</sup> There is no evidence to support where the nomination originated or if it was drafted by the amphibious Task Group commander. The letter describes the background to the amphibious operation and Lieutenant Commander Band’s actions stating that he:

*‘...was in charge of the naval beach party ... he landed with the first wave in the face of heavy enemy machine gun and mortar fire. In disregard of his own safety he repeatedly exposed himself in his efforts to accomplish his task, and was severely wounded. Though wounded he continued to direct his group and was successful in diverting one group of landing craft which were about to land on the wrong beach ... LCDR Band was picked up unconscious and returned to the field hospital where he died shortly thereafter ...’*<sup>29</sup>

35. This letter included a draft citation for the action which concluded that:

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<sup>25</sup> Ibid.

<sup>26</sup> Amphibious Force, Seventh Fleet FE25/A12-1 dated 23 September 1943

<sup>27</sup> Ibid.

<sup>28</sup> Commander Seventh Fleet P15, Serial 7604 dated 26 November 1943

<sup>29</sup> Ibid.

*'His gallantry and courage were in keeping with the highest traditions of the Naval Service'.<sup>30</sup>*

36. On 14 December 1943 the Commander-in-Chief United States Fleet wrote to the United States Secretary of the Navy endorsing the recommendation of Commander Seventh Fleet that Lieutenant Commander Band be awarded the Navy Cross.<sup>31</sup>

37. On 23 December 1943 the United States Navy Board of Decorations and Medals considered Lieutenant Commander Band's nomination for the Navy Cross and recommended to the United States Secretary of the Navy that Lieutenant Commander Band:

*'be posthumously awarded the Navy Cross in recognition of extraordinary heroism in action against the enemy as officer in charge of the naval beach party that landed at the Japanese occupied Finschhafen on 22 September 1943 as described in the basic correspondence'.<sup>32</sup>*

38. The recommendation that the Navy Cross be awarded to Lieutenant Commander Band was approved by the United States Secretary of the Navy on 6 January 1944.<sup>33</sup>

39. On 26 January 1944 the United States Chief of Naval Personnel initiated a request through the Chief of Naval Operations to gain the consent of the Australian Government to offer the award to Lieutenant Commander Band.<sup>34</sup> The Chief of Naval Operations wrote to the United States Naval Attaché in Australia on 7 February 1944 asking him to 'ascertain from the appropriate Australian authorities' whether the posthumous award of the Navy Cross to Lieutenant Commander Band 'would be agreeable to the Australian Government'.<sup>35</sup> On 1 March 1944 the United States Minister in Australia – Mr Nelson T. Johnson wrote to the Australian Minister for External Affairs asking whether 'such an award would be agreeable to the Commonwealth Government'.<sup>36</sup>

### **The Australian Government's 1944 Consideration of the United States Proposal to Award the Navy Cross to Lieutenant Commander Band**

40. The Secretary of the Department of External Affairs forwarded the proposal to award the Navy Cross to Lieutenant Commander Band to the Australian Secretary of the Navy seeking advice, 'having regard to the rules for acceptance of foreign honours'.<sup>37</sup> The Secretary also asked on behalf of his Minister that 'given the services rendered by this officer as indicated in the citation', should 'the award of a British decoration' be considered?

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<sup>30</sup> Ibid.

<sup>31</sup> Commander in Chief United States Fleet FF1/P15(39) Serial 7945 dated 14 December 1943

<sup>32</sup> Navy Department Board of Decorations and Medals QB4-DAS dated 31 December 1943

<sup>33</sup> Ibid.

<sup>34</sup> Chief of Naval Personnel Pers328-MSD dated 26 January 1944

<sup>35</sup> Chief of Naval Operations Op13-N/njm Serial 5413 dated 7 February 1944

<sup>36</sup> United States of America Embassy 66-301-64 dated 1 March 1944

<sup>37</sup> Department of External Affairs 66-301-64 dated 15 March 1944

41. The Secretary of the Navy responded on 18 March 1944 stating that:

*'the Naval Board observe that the only British posthumous awards made, are the VC and Mentioned in Despatches'.*

and;

*'In the circumstances, the Naval Board concur in the proposed United States posthumous award, and do not intend to make any recommendation in regard to a British award.'*<sup>38</sup>

42. On 11 May 1944 the Acting Secretary of the Department of the Navy provided a briefing note to his Minister seeking approval for the award of the Navy Cross to Lieutenant Commander Band.<sup>39</sup> The Minister approved the proposal by signing the briefing note on 12 May 1944 and advice was passed to the Minister for External Affairs that the Minister had concurred with the proposal.<sup>40</sup> On 17 May 1944 the Department of External Affairs formally advised the United States Minister that the Australian Government 'accepted the proposed award' to Lieutenant Commander Band and asked for a copy of the citation.<sup>41</sup>

### **Approval and Presentation of the Navy Cross for Lieutenant Commander Band**

43. On 22 July 1944 the United States Secretary of the Navy, Mr James Forrestal signed the citation on behalf of the President of the United States awarding Lieutenant Commander Band the Navy Cross posthumously for:

*'Extraordinary heroism as Officer in Charge of the Naval Beach Party landing at Japanese-occupied Finschhafen, New Guinea, on September 22, 1943.'*<sup>42</sup>

44. The presentation of the award was coordinated through the United States Navy chain of command to Commander Seventh Fleet seeking that he arrange with the appropriate Australian authorities for the posthumous presentation of the decoration and notification to the Australian Government.<sup>43</sup> The citation for the award was sent to the Minister for External Affairs by the United States Minister on 9 January 1945.<sup>44</sup> On 24 April 1945 the United States Minister advised the Minister for External Affairs that the presentation of the Navy Cross:

*'was made to the next-of-kin of the officer concerned on March 28<sup>th</sup>, 1945, by the Commander, US Naval Forces in Europe.'*<sup>45</sup>

### **The Bradford Article**

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<sup>38</sup> Department of the Navy 013959 dated 18 March 1944

<sup>39</sup> Department of the Navy Ministerial Note dated 11 May 1944

<sup>40</sup> Department of Defence 66-301-64 dated 12 May 1944

<sup>41</sup> Department of External Affairs 66-301-64 dated 17 May 1944

<sup>42</sup> United States Secretary of the Navy Pers 328—jmc prepared 12 July 1944, signed 22 July 1944

<sup>43</sup> US Chief of Naval Operations Serial 246213 Op-13H-mj dated 31 July 1944

<sup>44</sup> Legation of the United States letter dated 9 January 1945

<sup>45</sup> Legation of the United States letter dated 24 April 1945

45. In the 2007 publication of *Wartime*, the official magazine of the Australian War Memorial, Mr John Bradford wrote an article titled *American Hero*, which discussed Lieutenant Commander Band, the posthumous award for the Navy Cross and is critical of the Australian Commonwealth Naval Board's (ACNB) decision not to recognise Band with an Imperial honour.

46. Bradford states that:

*'...arguably the greatest danger faced in amphibious operations fell to the "amphibious scouts" tasked with erecting beach markers to guide landing groups to their designated landing zones. The scouts at Finschhafen were commanded by LCDR Band...'*<sup>46</sup>

47. Bradford further states that:

*'as the officer in charge of the beach party, Band took charge of moving the battalion north to Scarlet Beach. Despite heavy machine-gun and mortar fire, he exposed himself time and again to direct his troops. In so doing he was mortally wounded. Despite this he continued to direct his troops to the proper beach until he fell unconscious ...'*<sup>47</sup>

48. The Tribunal noted that Mr Bradford made a submission to the Valour Inquiry regarding most of the Naval personnel listed in the Terms of Reference but did not make a submission regarding Lieutenant Commander Band. He has independently confirmed to the Tribunal that he holds no further information that may be of relevance in the matter of Lieutenant Commander Band.

### **Commander Wilkins' Submissions**

49. Commander Wilkins' submission to the Valour Inquiry in June 2011 requested that Lieutenant Commander Band be considered for the award of the VC 'for outstanding service in the Royal Australian Navy in World War 2' and noted that he had been 'recognised by the United States Navy but not by Australia'. He included 'an extract of the citation from the United States Navy archives' for the Navy Cross which Lieutenant Commander Band had received and an internet research summary of Band's actions which was attributed jointly to himself and Commander Hugh Jarrett, RAN, an officer who knew Band personally. He repeated the synopsis of the internet research summary in seeking that Lieutenant Commander Band be awarded the VC:

*'...for outstanding heroism as Officer-in-Charge of a Naval Beach Party in the landing at Japanese occupied Finschhafen, New Guinea on 22 September 1943...'*<sup>48</sup>

50. Commander Wilkins' submission and the internet research summary indicates that Lieutenant Commander Band was the Beachmaster on 22 September 1943

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<sup>46</sup> John Bradford, *American Hero*, *Wartime* Issue 37, January 2007, pp36-38

<sup>47</sup> Ibid.

<sup>48</sup> Commander Wilkins ([ausnavyleague@me.com](mailto:ausnavyleague@me.com)) email dated 241703 June 2011

responsible for placing markers on the beach to assist the inshore navigation of the amphibious landing craft. The submission states that due to error, the majority of the force landed further to the south:

*‘where Band leaped from the first barge and repeatedly exposed himself to enemy fire as he valiantly led the first wave of landing forces ashore despite persistent attacks from air and land ...’<sup>49</sup>*

51. Commander Wilkins further submits that Lieutenant Commander Band:

*‘ran across the beach, pistol in hand, calling for his men to follow. A Japanese called “who’s there”, and Band answered “the Navy” and was seriously wounded by a burst of machine gun fire but he maintained his station as the Beachmaster continuing to direct operations and preventing one group of landing craft from beaching in the wrong area where gunfire from the enemy was heavy. He finally collapsed on the beach and was taken to a field hospital where he died the following day ...’<sup>50</sup>*

52. In his application for review, Commander Wilkins opined that Lieutenant Commander Band’s ‘outstanding service ... falls with (sic) the guidelines for the award of the VC, which you will be aware of; “for those who, in the presence of the enemy, display most conspicuous acts of gallantry: A daring or pre-eminent act of valour, self-sacrifice or extreme devotion to duty”’.<sup>51</sup> He concluded his letter by urging the Tribunal to note that:

*‘the exceptional service of this officer also deserves to be properly recognised by his own nation’.*<sup>52</sup>

53. Commander Wilkins’ comments in response to the Navy submission made a number of assertions including:

*‘... LCDR Band performed outstanding heroic service under fire in battle, resulting in his KIA ...’.*

*‘... LCDR Band’s service ... clearly fulfils the terms of the award of the VC ...’*

*‘... I consider the wartime service of this officer who received a top Naval Honour from an Allied Navy, was failed by Australia who did not act to provide an appropriate Australian Honour ... LCDR Band fulfils all the conditions for the award of the VC (posthumously).’<sup>53</sup>*

54. Commander Wilkins also indicated that he was not satisfied that either the Tribunal or the Navy had approached the United States Navy to supply evidence of

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<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Commander Wilkins’ letter to the Tribunal received on 14 August 2015

<sup>52</sup> Ibid.

<sup>53</sup> Commander Wilkins’ letter to the Tribunal received on 20 November 2015

the chain of recommendation for Lieutenant Commander Band and he suggested that the Navy submission by Doctor Stevens had inadequately addressed his claims.

55. During the hearing, Commander Wilkins reiterated his view regarding Lieutenant Commander Band's gallantry and pointed out that in his view, Lieutenant Commander Band had won the admiration of the soldiers he had been with on the day of the landing as evidenced by the fact that they had carried photographs of his grave as a mark of respect.

56. Commander Wilkins also asked the Tribunal to note that contemporary awards could now be made retrospectively by the Australian Government as evidenced by the granting of the Unit Citation for Gallantry to HMAS *Yarra* in 2013 in recognition of the extraordinary gallantry of the ship's company in February and March 1942. He indicated that this precedent could now be applied to Lieutenant Commander Band's actions. He also reiterated his written view that consideration of the matter in the post war deliberations would have in all likelihood been prejudiced by the 'cultural bias of the ACNB'.

57. The Tribunal also noted the material provided by Commander Wilkins on 14 July 2016 which portrays a different view of how Lieutenant Commander Band was initially wounded and his subsequent actions:

*'For the assault on Finschhafen on 22 September the RAN provided a beach party of eight under the command of **Lieutenant Commander J.M. Band, RANR(S)**, who was the port director at Buna but had previously commanded the Naval Beach Commando School at Toorbul Point near Brisbane. On the run into what was believed to be Scarlet Beach before dawn, Band's landing craft was taken under fire by a Japanese machine—gun post and he was seriously wounded. It was the wrong beach but, despite his wounds he was able to direct the ensuing waves of assault craft on to Scarlet Beach where his second in command assumed the duties of beach master and the landing was a complete success. Band subsequently succumbed to his wounds, the first RAN beach commando to die in action ... Admiral Barbey was so impressed by Band's performance that he made sure he received the posthumous award of the US Navy Cross, a very rare honour for an Australian.'*<sup>54</sup>

### **The Defence Submission**

57. The material relied upon by the CN in making his decision in relation to Lieutenant Commander Band was the Stevens' Review.<sup>55</sup> Doctor Stevens stated that Commander Wilkins' claims for the VC 'appeared to be based on his assertion that Lieutenant Commander Band's service was not recognised by Australian authorities'. The Review indicated that Commander Wilkins provided no evidence of maladministration and no compelling new evidence 'concerning the action itself'.

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<sup>54</sup> Ian Pfennigwerth, *The Royal Australian Navy & Macarthur*, 2009 – edited extracts of p.10 provided by Commander Wilkins on 14 July 2016

<sup>55</sup> Review by Doctor Stevens of Requests for Medallion Recognition of Additional Naval Members Arising out of the 'Inquiry into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour' dated May 2015

58. The Stevens' Review relied upon archival material held in the Sea Power Centre, the Valour Inquiry and the author's personal knowledge of naval history. No attempt was made to seek supplementary information from Commander Wilkins or to examine original documentation including service records or archives, or to approach the United States Navy. In reaching the decision to refuse to recommend Lieutenant Commander Band for the VC, the CN appears to have relied exclusively upon a Decision Brief recommendation that:

*'none of the received submissions warrant a merits review on the basis of either maladministration or compelling new evidence'.<sup>56</sup>*

59. During the hearing, the Senior Navy Historian indicated that in the weeks leading up to the hearing he had conducted a thorough first principles review of Commander Wilkins' submissions and had conducted his own focussed research. He stated that he had discovered a number of inconsistencies in some of the tendered accounts in particular Commander Wilkins' account of the landing which stated that Lieutenant Commander Band had:

*'... ran across the beach, pistol in hand, calling for his men to follow. A Japanese called "who's there", and Band answered "the Navy" and was seriously wounded ...'.*

60. The Senior Navy Historian indicated that in his opinion, this account was either 'romanticised or embellished' as the Japanese would have been well aware they were under serious attack as evidenced by the significant naval bombardment that preceded the assault.

61. The Senior Navy Historian also provided an insight into the character of Lieutenant Commander Band taken from a review of his annual appraisal reports. The Senior Navy Historian opined that Band was an 'adventurer, prone to seeking attention and the thrill of military service'. In relation to how Lieutenant Commander Band came to be a part of the amphibious assault when he was neither posted to the assault force or a part of 532<sup>nd</sup> EBSR, the Senior Navy Historian suggested that in all likelihood, Band volunteered his experience or perhaps even took it upon himself to be available. There is no evidence that he was formally attached to the operation or that his parent unit (HMAS *Basilisk*) was aware that he was involved.

62. The Senior Navy Historian indicated to the Tribunal that he had researched the War Diaries and Reports of Proceedings of the units and ships involved in the assault at Finschhafen and this research had failed to reveal any further evidence regarding Lieutenant Commander Band's actions. There was also no evidence of who had initially raised Lieutenant Commander Band for recognition with the first material recording his actions being the previously mentioned letter of 26 November 1943 from Commander Seventh Fleet to the United States Secretary of the Navy recommending him for the 'award of the Navy Cross'.<sup>57</sup>

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<sup>56</sup> Decision Brief for CN dated 9 April 2014

<sup>57</sup> Commander Seventh Fleet P15, Serial 7604 dated 26 November 1943

63. The Senior Navy Historian stated that he had made approaches to the United States Naval History and Heritage Command in the hope that they could provide further information or evidence of the initial nomination process; however, after allowing a further period of time after the hearing for this avenue to be explored, nothing significant was produced.

64. On 5 July 2016 Mr Brett Mitchell of the Directorate of Honours and Awards of the Department of Defence (the Directorate) forwarded a reference to Lieutenant Commander Band that had been discovered in the '*Command History Seventh Amphibious Force 10 January 1943 to 23 December 1945*'.<sup>58</sup> The document contains a short piece describing the development of amphibious doctrine in 1943 and discusses the lack of success of various lodgements. It describes the assault on 22 September 1943 in the following terms:

*'At Finschhafen an Australian beach party of two officers and six men was designated to assist the Army but their effectiveness was limited by lack of equipment, and by the loss of their senior officer (Lt. Comdr. J.M. Band, RANR) who was mortally wounded while landing. Beaching control was unsatisfactory during the assault and also for the resupply landings. Beaches were not adequately marked, communications were poor, and liaison between ships and shore activities was practically non-existent.'*<sup>59</sup>

### **The Australian Honours System**

65. 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:

*Her Majesty The Queen has indicated her view that it is appropriate that Australian citizens should be recognised exclusively by the Australian system of honours ... accordingly I have consulted with the Premiers of States and we have agreed that Australian Governments, both State and Commonwealth, will henceforth cease to make recommendations for British honours...*<sup>60</sup>

66. **The Victoria Cross for Australia.** Prior to 1991, Australians were considered for the Victoria Cross under the auspices of the Imperial Royal Warrant originally made on 29 January 1856. Ninety-six Australians were awarded the medal. As the Tribunal is unable to make recommendations relating to Imperial honours, it may only review eligibility for the contemporary VC for Australia for Lieutenant Commander Band. Accordingly, the Tribunal's consideration will be subject to an assessment of the evidence relevant to 'the standards and regulations of the time'.

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

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<sup>58</sup> *Command History Seventh Amphibious Force 10 January 1943 to 23 December 1945* – Page 11-31 <http://www.ibiblio.org/hyperwar/USN/Admin-Hist/OA/419-7thAmphib> accessed 6 July 2016.

<sup>59</sup> Ibid.

<sup>60</sup> Prime Minister of Australia Media Release 111/92 dated 5 October 1992

*'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'.<sup>61</sup>*

68. 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.*

4. *Each decoration may be awarded posthumously.*

...

***Making of awards***

7. *Awards of the decoration shall be made, with the approval of the Sovereign, by Instrument signed by the Governor-General on the recommendation of the Minister.<sup>62</sup>*

...

69. **Witnesses.** While the Regulations for the Imperial VC and the VC for Australia do not mention the requirement for witness statements, Chapter 6 of the Defence Honours and Awards Manual provides policy and guidance on the current nomination and processing procedures for the VC for Australia. Included in the policy is the requirement for witnesses:

*'Nominations are to be supported by signed statements of at least three eye witnesses of the act for which the decoration is recommended. Wherever possible, these statements should be on oath. Provisions will be made for statements to be taken from witnesses who, through incapacity, cannot prepare or sign their statement. Group statements are not accepted'.<sup>63</sup>*

70. During the Second World War, three witness statements were generally required to support nominations for the VC for the Australian Army and the Royal Australian Air Force.<sup>64</sup> The Royal Australian Navy however adopted the British Admiralty procedure.<sup>65</sup> This procedure, outlined in Commonwealth Navy Order 43/42 required Commanding Officers to nominate individuals for decorations but not specify the actual award. There was no requirement for witnesses and nominations

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<sup>61</sup> Commonwealth of Australia Gazette No. S25 Victoria Cross Regulations, dated 4 February 1991

<sup>62</sup> Ibid.

<sup>63</sup> Defence Honours and Awards Manual Annex A to Chapter 6, Paragraph 10

<sup>64</sup> Defence Honours and Awards Appeals Tribunal, Report of the *Inquiry Into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour* dated 21 January 2013, p 4-41

<sup>65</sup> Ibid. 4-53

were considered by the ACNB before being forwarded to the Admiralty in London for approval and determination of the level of award.<sup>66</sup>

### **The Process Review – Handling of the Nomination**

71. Relying on the Service Record, the Tribunal was satisfied that at the time of his death, Lieutenant Commander Band was posted to the Navy shore base HMAS *Basilisk* in Port Moresby. The entry in the Service Record records his final appointment as:

*HMAS Basilisk 4 August 1943 to 23 September 1943*<sup>67</sup>

72. HMAS *Basilisk* was commissioned on 1 January 1943 under the command of Commander R.B.A. Hunt, OBE, RAN, who was previously the Naval Officer in Charge Port Moresby.

73. **Who Made the Nomination?** There is no evidence in the records to suggest why Lieutenant Commander Band was appointed as the Beachmaster for the amphibious lodgement. The force was a Coalition combined force with United States landing craft transporting the assault force which comprised Australian infantry troops. During the hearing, Navy suggested that Lieutenant Commander Band may have become involved due to his experience in amphibious instruction or perhaps his physical proximity to the proposed lodgement site. Navy suggested that doctrinally, the beach marking team would have been under the control of the amphibious lodgement commander – Commander Task Group 76.4 who was the commander of the United States Naval component responsible for the provision and operation of the landing craft.

74. The material discovered by the Directorate points to the fact that Lieutenant Commander Band was known by the Amphibious Force as evidenced by the statement ... *at Finschhafen an Australian beach party of two officers and six men was designated to assist the Army...*<sup>68</sup>. Further analysis of the HMAS *Basilisk* pay ledger by the Directorate confirmed that this group was collectively ‘drafted’ to *Basilisk* with the second officer, Sub Lieutenant Barnes, also appointed as the ‘Assistant Beachmaster Buna’.<sup>69</sup> The pay ledger indicates that the group including Lieutenant Commander Band were in the area of Finschhafen and ‘Scarlett Beach’ from 22 September 1943. Despite the discovery of this material, it remains unclear whether Lieutenant Commander was formally attached to the United States Amphibious Force or the Army assault force or what his actual responsibilities and tasks were during the assault.

75. The Tribunal was satisfied that although Lieutenant Commander Band was posted to HMAS *Basilisk* at the time of the action, it was clearly not possible for him to be nominated for a gallantry award through his parent Commanding Officer at the time as he was in all likelihood (using today’s parlance) ‘detached for duty’ to Task Group 76.4. The Tribunal considered it reasonable that on learning of Lieutenant

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<sup>66</sup> Ibid. 4-60

<sup>67</sup> NAA: A6769, Band, JM, RAN Record of Service (Officers)

<sup>68</sup> *Command History Seventh Amphibious Force 10 January 1943 to 23 December 1945* – Page 11-31

<sup>69</sup> Research Officer, Directorate of Honours and Awards email dated 081450 July 2016

Commander Band's actions, Commander Task Group 76.4 would initiate action through his own chain of command to recognise Lieutenant Commander Band's gallantry.

76. **The Chain of Command for Recommendations.** The Tribunal noted that the chain of recommendation by the United States Navy was consistent and carefully managed through Commander Seventh Fleet to the Commander-in-Chief of the United States Fleet; considered by the Departmental Decorations Board and finally endorsed by the United States Secretary of the Navy. The Tribunal also noted that once the award was endorsed, the Government of the United States appropriately consulted with the Australian Government to seek their consent to the award of the Navy Cross to Lieutenant Commander Band and this was duly granted.

77. The Tribunal was satisfied that by seeking consent, the actions of the United States Secretary of the Navy was consistent with the procedures agreed to by the Australian Minister for Defence in his letter of 16 April 1943 wherein he detailed the process for recommendation of United States awards to Australian personnel.<sup>70</sup> The approval by the Australian Government also accorded with this agreement. The Tribunal considered that Lieutenant Commander Band's situation could be considered a 'special case' and was satisfied that this was the intention provided in the Minister's letter as it related to flexibility to make awards posthumously.

78. **Consideration of an Imperial Award.** The Tribunal considered that at the time, Lieutenant Commander Band's actions and eligibility for an Imperial award was contemplated by Australian authorities as evidenced by the Secretary asking Navy should '... the award of a British decoration be considered', to which the Secretary of the Navy responded in 1944:

*'the Naval Board observe that the only British posthumous awards made, are the VC and Mentioned in Despatches'.*

and

*'In the circumstances, the Naval Board concur in the proposed United States posthumous award, and do not intend to make any recommendation in regard to a British award.'*<sup>71</sup>

79. **The 'Posthumous Gap'.** The Tribunal noted that the Valour Inquiry had considered the 'posthumous gap' whereby under the Imperial system in place during World War Two, only two posthumous awards could be made: the VC and the Mention in Despatches (MID).<sup>72</sup> The policy required that if it was considered that the action did not warrant a posthumous VC, the only alternative was the award of a posthumous MID. The Valour Inquiry stated that the shortcomings of the Imperial system in this regard were recognised at the time but a considered decision was made not to change the system. The Valour Inquiry determined that it was not reasonable for it to reconsider the cases of Australian personnel who were awarded a posthumous MID, and now to decide, had they lived, whether they would have been awarded

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<sup>70</sup> Minister for Defence Letter to General MacArthur dated 16 April 1943 – Department of Defence WP008 Honours File No 1 to 30 April 1945

<sup>71</sup> Department of the Navy 013959 dated 18 March 1944

<sup>72</sup> Defence Honours and Awards Appeals Tribunal, Report of the *Inquiry Into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour* dated 21 January 2013, [8-18]

anything other than an MID. To attempt such a review would introduce an anomalous precedent that would create an injustice for every other posthumous MID recipient and pose considerable risk to the standing of the Australian honours and awards system.

80. **Bias.** The Tribunal considered that there was clear evidence that the ACNB had considered Lieutenant Commander Band's nomination for the Navy Cross and in so doing had recommended to the Minister that the award be accepted and further that Lieutenant Commander Band should not be considered for Imperial awards.<sup>73</sup> Whilst Commander Wilkins may consider that the actions of the ACNB in 1943-45 could perhaps be viewed as 'possible cultural bias' or 'a cultural ex-colonial bias towards Australian naval personnel'; the Tribunal could find no evidence to support these assertions.<sup>74</sup>

### **Finding in Relation to the Process Review**

81. The Tribunal finds that Lieutenant Commander Band's actions on 22 September 1943 were considered by the appropriate authorities, in accordance with processes agreed between Australia and the United States in 1943 and a decision was made by the Minister for Defence to consent to the award of the Navy Cross to Lieutenant Commander Band. The Tribunal also finds that there is no evidence of maladministration in the consideration of Lieutenant Commander Band's recommendation for gallantry and that no new evidence is available that would suggest that the award was or was not warranted.

### **The Merits Review – Is Lieutenant Commander Band Eligible for the Awarded the Victoria Cross for Australia**

82. **Guidance.** Having found that there was no case of maladministration the Tribunal turned to an assessment of the actions of Lieutenant Commander Band against the eligibility criteria for the VC, in essence, conducting a merits review of his actions. A merits review requires the examination of the merits of the matter rather than the lawfulness of the decision under review.<sup>75</sup> The Tribunal noted that guidance for merits review is detailed in the Valour Inquiry.<sup>76</sup> This guidance states that the Tribunal, in the conduct of a merits review, is being asked to 'place itself in the shoes of the original decision-maker' and where the original decision-maker made a conscious decision not to make an award, the Tribunal 'was being asked to overturn that decision'. The guidance suggests that:

*'...if the evidence was exactly the same as that available to the original decision-maker, and if the Tribunal wished to recommend a revised award, it would need to overturn the original decision ...'*<sup>77</sup>

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<sup>73</sup> Department of the Navy 013959 dated 18 March 1944

<sup>74</sup> Commander Wilkins letter dated 18 November 2015

<sup>75</sup> Council of Australasian Tribunals Practice Manual – 1.3.1.2 dated 7 April 2006

<sup>76</sup> Defence Honours and Awards Appeals Tribunal, Report of the *Inquiry Into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour* dated 21 January 2013, [8-46]

<sup>77</sup> *Ibid.*

83. The guidance indicates that if new evidence was available then the Tribunal would need to consider the ‘precision, accuracy and truth of that evidence’ and that the evidence would need to be ‘compelling and reliable’. Further, the guidance states that:

*‘... if no decoration was recommended, and the Tribunal could be sure that there was no conscious decision not to make an award, then the Tribunal would be in the situation of the original decision-maker or recommender.’<sup>78</sup>*

84. The guidance concludes that the merits review revolves around the evidence and, if the Tribunal was persuaded that new evidence was valid, it then needed to ‘consider whether the evidence warranted a new or revised award, judged against the criteria applying at the time’.

85. For consistency and to protect the integrity of the honours and awards system, the Tribunal decided to conduct the merits review in accordance with this guidance.

86. **Evidence Available to the Decision Maker.** The evidence available to the ACNB when they became aware of the nomination for the Navy Cross was the citation attached to the correspondence citing Lieutenant Commander Band for his actions. There were no witness statements, no reports from Lieutenant Commander Band’s Commanding Officer and no additional evidence in war diaries or reports of proceedings. The Senior Navy Historian also indicated that there was no record of Lieutenant Commander Band’s death in HMAS *Basilisk*’s Report of Proceedings for September 1943.

87. The Tribunal, having reviewed the Official History and various other accounts of the landing, was of the view that the citation for the Navy Cross paints a reasonably accurate description of Lieutenant Commander Band’s actions. The Tribunal was therefore satisfied that the ACNB, when contemplating what award it should recommend, had sufficient evidence to make a decision regarding the recognition of Lieutenant Commander Band for an Imperial award.

88. **Discretion.** The Tribunal noted the agreements between the United States and Australia did not specifically preclude the making of an Imperial award when a foreign award was also made thus allowing the decision maker some discretion. The Prime Minister’s letter of 16 April 1943 states that:

*2.(a) As a general rule it is desirable to avoid duplication of awards and the grant of a foreign as well as a British decoration to one individual for the same service or action will be avoided.’<sup>79</sup>*

89. The Tribunal considered that it was therefore open to the ACNB to use discretion in relation to Lieutenant Commander Band’s recognition and that when faced with the United States Navy recommendation, the ACNB exercised that discretion by deciding that he should not be recommended for an Imperial award.

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<sup>78</sup> Ibid.

<sup>79</sup> Minister for Defence Letter to General MacArthur dated 16 April 1943 – Department of Defence WP008 Honours File No 1 to 30 April 1945

90. **The Citation and the Action.** The material reviewed suggests a number of possible scenarios for how and when Lieutenant Commander Band was landed, when he was wounded and what happened when he was on the beach on 22 September 1943.

91. The official citation states that Lieutenant Commander Band ‘valiantly led the first wave of landing forces ashore’, suggesting that he and his team landed simultaneously with the first infantry troops.<sup>80</sup> This view is supported by Commander Wilkins who states that ‘the first wave was to land at 4.45am, but due to error, the majority landed at Siki Cove to the south, where Band leapt from the first barge ... as he valiantly led the first wave of landing forces ashore...’.<sup>81</sup> The statement in the Command History of the Seventh Amphibious Force that Lieutenant Commander Band was ‘mortally wounded while landing’ supports some aspects of this version.<sup>82</sup>

92. Mr Bradford in his article *American Hero* does not indicate how Lieutenant Commander Band came ashore but does support one version of events that he took charge of moving the battalion from Siki Cove to Scarlett Beach.<sup>83</sup>

93. These versions are at variance with the Official History which states that ‘the Australian and American “amphibious scouts” ... had attempted to gather on Scarlett Beach from the various positions in which they had been landed by the first wave ...the commander of these scouts, Lieutenant Commander Band was mortally wounded while moving north from Siki Cove to the beach:

*‘Carrying his equipment to measure depths he floundered into the water, after being wounded, in a desperate attempt to carry out his task.’<sup>84</sup>*

94. A further version of Band’s actions and the landing is provided in the Ian Pfenningwerth publication:

*‘... on the run into what was believed to be Scarlet Beach before dawn, Band’s landing craft was taken under fire by a Japanese machine—gun post and he was seriously wounded. It was the wrong beach but, despite his wounds he was able to direct the ensuing waves of assault craft on to Scarlet Beach where his second in command assumed the duties of beach master and the landing was a complete success. Band subsequently succumbed to his wounds ...’<sup>85</sup>*

Giving considerable weight to the Official History and the United States citation, and less weight to Mr Bradford and Commander Wilkin’s version of events and the 2009 publication by Pfenningwerth, the Tribunal was satisfied on the balance of probabilities that Lieutenant Commander Band did in fact land at Siki Cove with the first wave of

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<sup>80</sup> United States Secretary of the Navy Pers 328—jmc prepared 12 July 1944, signed 22 July 1944

<sup>81</sup> Commander Wilkins email dated 24 June 2011

<sup>82</sup> *Command History Seventh Amphibious Force 10 January 1943 to 23 December 1945* – Page 11-31 <http://www.ibiblio.org/hyperwar/USN/Admin-Hist/OA/419-7thAmphib> accessed 6 July 2016.

<sup>83</sup> John Bradford, *American Hero*, *Wartime* Issue 37, January 2007, pp36-38

<sup>84</sup> David Dexter, *The New Guinea Offensives, The Official History of the Army in the Second World War*, Volume VI, Australian War Memorial, Canberra, 1959, p455.

<sup>85</sup> Ian Pfenningwerth, *The Royal Australian Navy & Macarthur*, 2009 – edited extracts

the assault and, realising that they had been landed in the incorrect place, did assist in leading the assault troops back towards Scarlett Beach.

95. The Tribunal, relying on the citation, was also satisfied that Lieutenant Commander Band was mortally wounded during the landing on 22 September 1943. Whether this occurred in the landing craft; whilst guiding the battalion towards Scarlett Beach when he ‘floundered in the water after being wounded’ or, as Commander Wilkins claims, by a burst of machine gun fire as he ‘ran across the beach ... calling for his men to follow’ will never be known. The Tribunal notes that Commander Wilkins during his oral evidence stated that he was not sure as to where he had sourced his version of events. The Tribunal also noted that Navy, the Applicant or the Directorate were unable to produce eye witness accounts or the initiating citation from the United States authority. Accordingly, the Tribunal could only rely on the actual Navy Cross citation as the evidence to support the contention that Lieutenant Commander Band’s actions warrant the award of the VC.

96. The Tribunal accepted that the official citation indicates that Lieutenant Commander Band ‘showed absolute disregard for his own safety’, ‘repeatedly exposed himself’ to enemy fire and ‘demonstrated tenacious courage’. However, the Tribunal considered that without the benefit of witness statements, it could not be satisfied beyond reasonable doubt that the actions met the extremely high standard to warrant the award of the VC.

97. The Tribunal considered that the actions as described could have warranted the award of a lower gallantry decoration such as the Military Cross however, with the ‘posthumous gap’ policy being in place at that time, the only other option open to the ACNB if it had determined that the action did not meet the threshold for the VC was the possible award of the MID.

98. **New Evidence.** The Tribunal noted that no new evidence was made available by the Applicant and his account of the action was unable to be verified. The Tribunal, noting the comments of the Senior Navy Historian regarding the Applicant’s account was not persuaded that the Applicant’s version of the action could be considered to be new evidence. Accordingly, without new evidence or witness statements, the Tribunal determined that it could not justify overturning the original decision.

99. The Tribunal also contemplated what may have transpired if the citation, as drafted, had been passed by Commander Task Group 76.4 to Lieutenant Commander Band’s Commanding Officer at HMAS *Basilisk*. If this had occurred and Commander Hunt as the Nominating Officer had forwarded the recommendation to the ACNB without three witness statements, the Tribunal, as previously stated, was of the opinion that the only award that Lieutenant Commander Band would have been considered for would be the MID. The Tribunal noted that the guidance at the time would have dictated that Commander Hunt would not have been able to recommend the level of award and thus the level, if on-forwarded by the ACNB, would have been left to the Admiralty to determine.

100. Whilst this is a hypothetical situation, it is likely that the ACNB did have the opportunity to review the action albeit the recommendation came from the United

States. The Tribunal was satisfied that in reviewing the action as cited by the United States authority, it was open to the ACNB to make a recommendation which in this case was that Lieutenant Commander Band should not be recommended for an Imperial award.

101. The Tribunal was sympathetic to the view expressed by Mr Bradford that:

*‘... by accepting the US award, the Naval Board effectively ... ensured Band’s gallantry would at least be accorded a high level of recognition ...’*<sup>86</sup>

### **Finding in Relation to the Merits Review**

102. No previously missing, new or compelling evidence was produced that would cause the Tribunal to conclude that Lieutenant Commander Band’s actions were more substantial than are recorded in his original citation. The Tribunal finds that Lieutenant Commander Band’s actions on 22 September 1943 were undoubtedly brave but did not meet the exceptionally high standard required for the award of the VC.

### **Conclusion**

103. The Tribunal concluded that on both process and merits, the case was properly handled at the time, followed due process correctly and that Lieutenant Commander Band’s actions were in all likelihood determined not to meet the standard required to be awarded the VC. The Tribunal considered that the ACNB most likely decided that with the VC not available, that receipt of the US Navy Cross, a much higher award than the MID, was a more appropriate way to recognise Lieutenant Commander Band’s bravery.

### **TRIBUNAL DECISION**

104. The Tribunal decided to recommend to the Minister that the decision by the Chief of Navy to not recommend Lieutenant Commander J.M. Band, RANR(S) for the award of ‘the Victoria Cross for outstanding service in the Royal Australian Navy in World War Two’ be affirmed.

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<sup>86</sup> John Bradford, *American Hero*, *Wartime* Issue 37, January 2007, p 38