



**Australian Government**

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Defence Honours and Awards Appeals Tribunal

**Report of the Inquiry into the feasibility  
of amending the eligibility criteria for the  
Republic of Vietnam Campaign Medal**

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## LETTER OF TRANSMISSION

### **Inquiry into the feasibility of amending the eligibility criteria for the Republic of Vietnam Campaign Medal**

The Hon Darren Chester MP  
Parliamentary Secretary for Defence  
Parliament House  
Canberra ACT 2600

Dear Parliamentary Secretary,

I am pleased to present the report of the Defence Honours and Awards Appeals Tribunal on the *Inquiry into the feasibility of amending the eligibility criteria for the Republic of Vietnam Campaign Medal*.

The inquiry was conducted in accordance with the Terms of Reference approved by the Government in November 2014.

In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011*, as amended, a copy of this report will be published on the Tribunal's website – [www.defence-honours-tribunal.gov.au](http://www.defence-honours-tribunal.gov.au) – 20 working days after the day this report is provided to you.

I would be grateful for advice on your response to this report when available.

Yours sincerely



**Mr Mark Sullivan**  
Chair  
Defence Honours and Awards Appeals Tribunal

25 June 2015

## TERMS OF REFERENCE

The Defence Honours and Awards Appeals Tribunal (the Tribunal) is directed to inquire into and report on the Australian Government's legal ability to amend the eligibility criteria for the Republic of Vietnam Campaign Medal.

While taking into account the findings of the recent Tribunal *Inquiry into the eligibility for the Republic of Vietnam Campaign Medal*, the Tribunal is directed to undertake additional investigation to determine:

- The Australian Government's legal ability to amend the eligibility criteria for the Republic of Vietnam Campaign Medal (RVCM) given the Government of the Republic of Vietnam no longer exists;
- If it is found to be legally possible to amend the criteria, in what manner should they be amended, and is it appropriate that they be amended; and
- If it is appropriate to amend the criteria, should the Government of the Republic of Vietnam's 1973 directive to the United States Secretary of Defence to reduce the duration of service eligibility from six months to two months be applied to Australian personnel.

The RVCM is classed as a foreign award by Australia. It was offered to a range of countries (including Australia, New Zealand and the United States) that supported the Government of the Republic of Vietnam during the Vietnam War. Eligibility criteria for the RVCM were determined by Government of the Republic of Vietnam during the Vietnam War.

The Tribunal is to determine its own procedures, in accordance with the general principles of procedural fairness, when conducting its inquiry as set out in these Terms of Reference. The Tribunal is to report, in writing, to the Parliamentary Secretary for Defence on the findings and recommendations that arise from the Inquiry.

In making its findings and formulating its recommendations the Tribunal is required to maintain the integrity of the Australian honours and awards system and identify any consequential impact that any finding or recommendation may have on that system.

Note: Submissions provided to the Tribunal's *Inquiry into the eligibility for the Republic of Vietnam Campaign Medal* will be taken into account and should not be re-submitted.

## **EXECUTIVE SUMMARY**

1. The Tribunal commenced its inquiry on 10 November 2014. It received 49 written submissions from individuals, the Department of Defence (Defence) and several ex-service organisations. The Tribunal also reviewed the 76 submissions received for the Tribunal's *Inquiry into the eligibility for the Republic of Vietnam Campaign Medal*.
2. The first issue the Tribunal considered was whether the Australian Government has the legal authority to amend the eligibility criteria for the award of the Republic of Vietnam Campaign Medal (RVCM). The Tribunal obtained legal advice from the Australian Government Solicitor that concluded that the Australian Government does not have the legal authority.
3. The Tribunal considered the arguments in the submissions in favour of amending the eligibility criteria. Those arguments were based on the opinions and beliefs of the submitters, not in law. The Tribunal accepted the advice of the Australian Government Solicitor and found that the Australian Government does not have the legal authority to amend the eligibility criteria for the RVCM.

### **Recommendations**

4. The Tribunal makes the following recommendations:

#### **Recommendation 1**

The Tribunal recommends that the eligibility criteria for the Republic of Vietnam Campaign Medal not be amended because the Australian Government does not have the legal authority to do so.

# REPORT OF THE TRIBUNAL

## Introduction

1. The Defence Honours and Awards Appeals Tribunal was established pursuant to Part VIIC of the *Defence Act 1903* (the Act) on 5 January 2011. Before that date many of the functions of the Tribunal were undertaken by the Defence Honours and Awards Tribunal (the old Tribunal), which operated administratively. The Act contains the provisions for the establishment of the new Defence Honours and Awards Appeals Tribunal (the Tribunal), as well as specifying its members, powers and functions. The Tribunal's functions are set out in s. 110UA of the Act. Under s. 110W the Minister may direct the Tribunal to hold an inquiry into a specified matter concerning Defence honours or awards. The Tribunal must then hold an inquiry and report, with recommendations, to the Minister.

2. On 2 October 2014, the Parliamentary Secretary for Defence, the Hon Darren Chester MP, wrote to the acting Chair of the Tribunal providing the Government's response to the *Inquiry into the eligibility for the Republic of Vietnam Campaign Medal (RVCM)*. In not accepting one of the Tribunal's recommendations (that *No action be taken by the Australian Government to change the criteria for the award of the RVCM*), the Parliamentary Secretary sought an additional investigation by the Tribunal to *determine the Australian Government's legal ability to change the eligibility criteria for the RVCM given the government of the time no longer exists*. The Terms of Reference for this Inquiry were agreed by Government in November 2014 and are set out in full at the commencement of this report.

3. The inquiry was undertaken by the following members of the Tribunal:

Ms Christine Heazlewood (Presiding Member)  
Emeritus Professor David Horner AM  
Mr Richard Rowe PSM

4. No conflicts of interest were declared. Emeritus Professor Horner served in Vietnam in 1971 and was awarded the Republic of Vietnam Campaign Medal. Professor Horner was also a member of the Tribunal that conducted the *Inquiry into the eligibility for the Republic of Vietnam Campaign Medal* (first Inquiry).

## Conduct of the Inquiry

5. The Inquiry commenced on 10 November 2014 with a Ministerial media release and information provided on the Tribunal's website, giving notice of the Inquiry and calling for submissions by 11 December 2014.

6. The Tribunal received 49 written submissions from individuals and several ex-service organisations. The organisations and individuals who made these submissions are listed at Appendix 1. As mentioned in the Terms of Reference for this Inquiry, the Tribunal also reviewed the 76 submissions received for the first Inquiry and the

details of the individuals and organisations who provided those submissions are also listed at Appendix 1.

7. The Tribunal first met on 10 December 2014 to consider the Terms of Reference. Further deliberative meetings were held and the details are set out at Appendix 2.

## **Hearings**

8. The Tribunal did not hold public hearings. Given the legal advice it received from the Australian Government Solicitor, the Tribunal decided that public hearings would not assist it in its deliberations.

## **Tribunal Research**

9. In addition to material provided in submissions from members of the public, and submissions from the Department of Defence and the Department of the Prime Minister and Cabinet, the Tribunal sought legal advice in relation to the first subparagraph of the second paragraph of the Terms of Reference (the first question). That legal advice, from the Australian Government Solicitor, is referred to in detail in paragraphs 37 and following. A copy of that advice is provided in full at Appendix 3.

## **The Terms of Reference**

10. The first question requires the Tribunal to inquire into:

*The Australian Government's legal ability to amend the eligibility criteria for the Republic of Vietnam Campaign Medal (RVCM) given the Government of the Republic of Vietnam no longer exists.*

11. The two further questions set out in subparagraphs two and three of paragraph two, depend upon the Tribunal's finding as to whether the Australian Government has the legal ability to amend the eligibility criteria for the RVCM. If the Australian Government does not have the power to amend the eligibility criteria, any findings and recommendations by the Tribunal in relation to the second and third questions would have no effect because the Government could not implement those recommendations.

12. For this reason the Tribunal initially considered whether the Government had the legal authority to amend the eligibility criteria for the RVCM.

## **The First Inquiry into the RVCM**

13. The first Inquiry directed that the Tribunal inquire into the:

- *application of the eligibility criteria for the Republic of Vietnam Campaign Medal over time;*
- *unresolved issues with the application of those criteria; and*
- *how any future claims for this award should be administered.*

14. The Tribunal recommended amongst other recommendations that *No action be taken by the Australian Government to change the criteria for the award of the RVCN*. As a result of this recommendation the Parliamentary Secretary asked the Tribunal to inquire into whether the Government has the power legally to change the criteria for the award.

15. In its comprehensive report the Tribunal referred to the establishment of the RVCN including the criteria for the award of the medal. The Tribunal emphasised that the RVCN is a foreign award, not an Australian award. In May and November 1964 the Government of the Republic of Vietnam established the RVCN by decree. Two years later the Government of the Republic of Vietnam offered the medal to Australia to be awarded to its servicemen. After receiving permission from the Queen on 24 June 1966, the Australian Government accepted the award. The Tribunal noted that the crucial factor influencing the Government to accept the award was the criteria for the award of the RVCN. Those criteria were sufficiently different from the criteria for the award of the Australian campaign medal, the Vietnam Medal, for it not to be considered a violation of the policy that a foreign award should not be accepted for services that have already been rewarded with the grant of an Imperial award. To be awarded the RVCN the member must serve for at least six months, whereas the Vietnam Medal required service of as little as one day depending upon the circumstances. The criteria to be awarded the RVCN were more exacting and sufficiently different from the Vietnam Medal to persuade the Australian Government that it be accepted.

16. The qualifying conditions for the RVCN were set out in Article 3 of the Directive of the Government of the Republic of Vietnam, which was based on the Decrees of May and November 1964 (the Directive). Article 3 provided:

*Article 3: Allied soldiers assigned to the Republic of Vietnam after 6 months in war time with mission to assist the Vietnamese Government and the RVNAF to fight against armed enemies are eligible for Campaign Medal decorations; ...<sup>1</sup>*

17. On 31 August 1966 the Chief of Joint General Staff for the Republic of Vietnam Armed Forces made orders awarding the RVCN to *all Royal Australian military persons* eligible for the award (Appendix 5). The Australian authorities were to determine which servicemen were eligible. The conditions for the award for the Military Forces were subsequently promulgated in a Military Board Instruction (MBI) 102-4 issued 23 December 1968. The criteria did not include an amendment made by the Republic of Vietnam Government in March 1966. The qualifying conditions in the Military Board Instruction provided that the member must be allotted for 'special service' as defined in MBI 216-1 and:

*a. must serve in Vietnam for a minimum period, either continuous or aggregated, of 181 days from 31 Jul 62 inclusive to a future date,*  
*b. ...<sup>2</sup>*

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<sup>1</sup> Government of the Republic of Vietnam Directive Nr. HT. 655-430, 1 September 1965. See Appendix 4.

<sup>2</sup> Military Board Instruction 102-4, issued 23 December 1968.



18. The Tribunal considered the amendment made by the Government of the Republic of Vietnam in March 1966 and decided that it did not affect the award of the medal to Australian servicemen. Following the defeat of the Government of the Republic of Vietnam on 30 April 1975, the state of the Republic of Vietnam ceased to exist as an identifiable sovereign entity. In 2013, the Australian Government considered how it was best able to administer the award of the RVCN, which resulted in the first Inquiry by the Tribunal.

## **Submissions**

### ***The First Question***

#### **Department of the Prime Minister and Cabinet Submission**

19. In its submission to the Tribunal dated 11 February 2015 the Deputy Secretary Governance, Department of the Prime Minister and Cabinet, stated that the Department stood by its submission to the first Tribunal Inquiry. In the earlier letter dated 14 November 2013, the Deputy Secretary Governance advised (*It is our view that the Australian Government cannot amend the criteria for the award of a medal created by the former government of a state that no longer exists.*

#### **Attorney General's Department**

20. The Tribunal requested advice from the Office of International Law in the Attorney General's Department. In their reply emailed on 25 November 2014 the Office of International Law advised that it *had not identified any international legal obligations that would affect Australia's ability to amend the eligibility criteria for the RVCN*. There is no treaty between Australia and Vietnam that creates any obligations in this regard.

#### **Individual Submissions**

21. Two former National Servicemen (Mr Cole-Clark and Mr Hooper)<sup>3</sup> argued that a precedent had been set when the criteria for awarding the Australian Defence Medal (ADM) had been amended before the medal was issued. The Government should take the same action in regard to the RVCN and amend the criteria. It was also argued that Defence should interpret 'six months' as being either 170 days or 180 days.

22. The Tribunal notes that the ADM is an Australian medal established by the Queen in Letters Patent with the Regulations attached, at the instigation of the Australian Government. The Queen has the power to amend these Regulations, which she did in 2006 at the request of the Australian Government. The RVCN was established by the Government of the Republic of Vietnam. The Australian Government cannot ask the Government of the Republic of Vietnam to change the criteria because that government and state no longer exist. The suggestion that six months should be interpreted as 170 or 180 days was dealt with in the first Inquiry.

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<sup>3</sup> Submission 3, Mr Bruce Cole-Clark and Mr Robert Hooper.

23. Mr Barnes<sup>4</sup> in his submission argued that the Republic of Vietnam created the medal with rudimentary eligibility criteria. It *left authority for the allied governments to maintain or adjust certain criteria conditions*. The Australian and United States Governments had interpreted these conditions slightly differently and so the Australian Government had the implied authority to amend the eligibility criteria. Mr Barnes then submitted that the six-month period should be reduced because it had later been reduced by the Government of the Republic of Vietnam at the request of the United States Government.

24. As noted in the legal advice obtained by the Tribunal, Mr Barnes' argument supported the interpretation that only the Government of the Republic of Vietnam could amend the eligibility criteria. When the United States had wanted the criteria changed it had asked the Government of the Republic of Vietnam if it would agree to the change. The United States Government clearly did not believe that it had the power to amend the eligibility criteria and there was no implied authority to amend them.

25. In his submission Mr Sabben<sup>5</sup> argued that the claim that the will of the Government of the Republic of Vietnam cannot be changed because it has ceased to exist, cannot be sustained. He argued that the eligibility criteria for gallantry medals and unit citations were changed well after 30 April 1975. The Tribunal understands that the eligibility criteria have not been changed, but rather the Government of the Republic of South Vietnam offered these medals and citations to certain members of the Defence Force and to one unit. When these medals and citation were first offered, the Australian Government refused to give permission for the medals and citation to be accepted. Subsequently the Australian Government gave permission for the medals and citation to be accepted. The criteria had not changed.

26. Mr Morrissey<sup>6</sup> argued in his submission that the sentence (*F*)*oreign authorities will determine eligibility of their personnel for this award* meant that the Australian Government could determine the eligibility criteria. When the document is read as a whole it is clear that this interpretation cannot be sustained. That sentence gave the Australian Government the power to decide who met the eligibility criteria established by the Government of the Republic of Vietnam in its Directive.

27. In a detailed submission Mr Barry<sup>7</sup> argued that the Tribunal's reasoning was misconceived when it relied upon the principle that it was bound to *maintain the integrity of the Australian honours and awards system, to keep faith with the intentions of the former government of Vietnam*. He submitted that the Tribunal did not know the intention of the Government of the Republic of Vietnam. The Tribunal notes that it does know the intention of the Government of the Republic of Vietnam because that intention is clearly set out in the Directive. The intention was that allied soldiers must serve for six months. The two amendments that were made to the eligibility criteria were made by the Government of the Republic of Vietnam at the

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<sup>4</sup> Submission 13, Mr Mal Barnes, Royal Australian Air Force (RAAF) Ubon Reunion Recognition Group.

<sup>5</sup> Submission 16, Mr Dave Sabben MG.

<sup>6</sup> Submission 18, Mr Michael Morrissey.

<sup>7</sup> Submission 25 and 25A, Mr Richard Barry.

request of the United States Government. The United States Government did not make amendments to the eligibility criteria.

28. In his submission Mr Scully<sup>8</sup>, President of the RAAF Vietnam Veterans sub-branch, argued that the Australian Government did not have the power to change the eligibility criteria. He wrote that *we believe it would be extremely high-handed and morally indefensible to now further vary the initial qualifying service set by a sovereign Foreign Government*. The Tribunal notes that under the terms of reference it must decide whether the Australian Government has the legal power to change the eligibility criteria. Whether that would be morally or ethically reasonable would need to be considered under Questions 2 and 3.

29. Mr Rose<sup>9</sup> argued in his submission that the Government of the Republic of Vietnam had made two amendments to the original Directive. Pursuant to the second amendment members who had served as part of Operation *Frequent Wind* (evacuation of civilians from Vietnam in 1975) should qualify for the award. The Tribunal notes that the first Inquiry considered this issue.

30. Brigadier Mansford (Retd)<sup>10</sup> submitted that there were precedents for changing eligibility criteria by reducing the requirement for time served on an operation. The eligibility criteria should be reduced for the RVCM. The Tribunal notes that the examples referred to do not relate to a government that has ceased to exist. In each case either the country or the United Nations can be approached to change the eligibility criteria for the medal. The Australian Government has not unilaterally changed the eligibility criteria in relation to any of the foreign awards referred to in the submission.

31. In his submission Group Captain Jacobsen (Retd)<sup>11</sup> argued that the Australian and United States Governments interpreted the amendment in 1966 to the Directive slightly differently and this gave an implied authority to the Australian Government to amend the eligibility criteria. Also the Government should amend the eligibility criteria if an anomaly or discrimination resulted from the application of the present criteria. The Tribunal answered the first argument in paragraph 24. In relation to the second argument the Tribunal notes that the submitter has not referred to examples of discrimination or an anomaly. He has referred to what he regards as an unfair outcome as a result of the application of the eligibility criteria.

## ***The Second and Third Questions***

### **The Defence Submission**

32. In its submission in February 2015<sup>12</sup> Defence referred to its submission to the first Inquiry and stated that Defence had no authority to provide legal advice on the

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<sup>8</sup> Submission 29, Mr John Lee Scully, President RAAF Vietnam Veterans Sub-Branch VVAA (VIC).

<sup>9</sup> Submission 31, Mr Geoffrey Rose.

<sup>10</sup> Submission 35, Brigadier George Mansford (Retd).

<sup>11</sup> Submission 37, Group Captain John Jacobsen (Retd).

<sup>12</sup> Submission 40, Department of Defence, received under cover of a letter signed by Chief of the Defence Force, Air Chief Marshal M.D. Binskin AC dated 27 February 2015.

legal authority of the Australian Government to amend the criteria for the award of the RVCM. It declined to offer any advice with respect to the first question but did refer to the policy with respect to the second and third questions. Given the legal advice set out below the Tribunal did not need to consider this part of the Defence submission.

33. Defence advised that it had sought the views of the Australian Head of Mission in Hanoi. The Defence Attaché to Vietnam and Laos advised Defence that the eligibility criteria should not be amended and that the Australian Government possibly did not have the legal authority to do so. The Defence Attaché advised that the Australian Government should not approach the present Government of Vietnam to amend the criteria. This would be most inappropriate and might result in the RVCM being abolished altogether.

### **Individual Submissions**

34. The Tribunal notes that the vast majority of the submissions it received referred to the second and third questions. Most of those submissions referred to what was perceived as an unfair outcome as a result of the application of the present eligibility criteria.

35. One submitter argued that *a change to the eligibility criteria to receive the RVCM, without the current, stringent qualifying period would demonstrate Australia's thankfulness and recognition of those who fought in Vietnam*. As referred to above, the RVCM is a foreign medal. The award of the RVCM demonstrates the Republic of Vietnam Government's *thankfulness and recognition of those who fought in Vietnam*, not the Australian Government's.

36. Several submitters argued that the number of '181 days' was an arbitrary figure chosen by the Australian Government. The Tribunal understands that the figure of 181 days was decided upon because it is the least number of days that could make up a period of six-months if served consecutively.

37. The Tribunal received several submissions after the closing date. All of these submissions addressed the second and third questions.

### **Legal Advice**

38. On 9 December 2014 the Tribunal sought legal advice from the Australian Government Solicitor. The advice by Mr Hardiman, the Deputy General Counsel was received on 3 February 2015. The advice considered the background to this Inquiry noting that the first Inquiry had received a number of submissions arguing that the eligibility criteria should be amended and that the Tribunal had recommended that no action should be taken.

39. Referring to the history in relation to this award, Mr Hardiman advised that the Queen (now the Governor General) would have had to have given permission before formal acceptance and the right to wear a medal could be given to a member of the Defence Force. Foreign Awards are worn in accordance with *The Order of Wearing*

*Australian Honours and Awards.* Because the RVCM was established by the Government of the Republic of Vietnam, only that Government had the power to amend the criteria, unless *it is possible to identify an amendment power which has been vested in it* (the Australian Government).

40. After considering the various Directives from the Government of the Republic of Vietnam and in particular the amended Article 3 Mr Hardiman concluded that while this Article allowed the Australian Government some discretion it would not extend to amending the criteria. The United States had requested that the Government of the Republic of Vietnam amend Article 3, which was agreed to and it was amended. This would support the conclusion that Article 3 should be interpreted so that it does not give the Australian Government the authority to amend the eligibility criteria.

41. Mr Hardiman considered the effect of the Government of the Republic of Vietnam ceasing to exist. The fact that that Government has ceased to exist does not confer power on the Australian Government to amend the eligibility criteria. He commented that even if this was the kind of power to which another state could "succeed", it would be very difficult to argue that Australia should be the successor State. Mr Hardiman found that *the Government of the Republic of Vietnam was the only body that had the power to amend the eligibility criteria ... there is no longer any body that has power to amend the criteria for the RVCM.*

42. Mr Hardiman concluded *there is an argument that any significant change in the criteria of the RVCM would mean that it was, in effect, a different award to that for which approval was previously given by the Queen.* This would particularly apply if the period of qualifying service were reduced because this was a consideration leading to the decision to accept the award.

## **Conclusion**

43. The question the Tribunal has to address is whether the Australian Government has the legal authority to amend the eligibility criteria for the RVCM. The legal advice provided by Mr Hardiman Deputy General Counsel, is that the Australian Government does not have the legal authority to amend the eligibility criteria for the award of the RVCM. The Tribunal is obliged to follow this advice unless there is a further legal advice or argument showing that this advice is incorrect. No such advice or argument has been presented to the Tribunal.

44. A number of submissions argued that the Australian Government did have the legal authority to amend the eligibility criteria. The Tribunal carefully considered those arguments but for the reasons mentioned above, rejected them. Arguments that there was an implied authority because the eligibility criteria had been amended at the request of the United States proved the opposite - that only the Government of the Republic of Vietnam could amend the eligibility criteria. Arguments referring to the eligibility criteria for other medals being changed did not support the claim that the Australian Government had the legal authority to amend the criteria for the RVCM. The other medals referred to were either Australian medals where the Australian Government does have the legal authority to amend the conditions, or related to

medals issued by the United Nations, where the United Nations could be approached to amend the criteria.

45. The Department of the Prime Minister and Cabinet opposed any amendment and expressed the opinion that the Australian Government did not have the legal authority to amend the criteria. Defence did not express an opinion on the legal authority but opposed amending the criteria. The Attorney General's Department advised that there were no international legal obligations that would prevent the Australian Government amending the criteria. This statement does not support the notion that the Australian Government has the legal authority to amend the criteria. It simply notes that none of Australia's international legal obligations would prevent such an amendment if the Australian Government had the legal authority.

46. After considering all the arguments put to it the Tribunal concluded that the Australian Government does not have the legal authority to amend the eligibility criteria in relation to the award of the RVC. Having come to this conclusion the Tribunal does not have to consider questions two and three in the Terms of Reference.

## **Recommendations**

47. The Tribunal makes the following recommendations:

### **Recommendation 1**

The Tribunal recommends that the eligibility criteria for the Republic of Vietnam Campaign Medal not be amended because the Australian Government does not have the legal authority to do so.

## APPENDICES

### APPENDIX 1 - Individuals and organisations who provided submissions to the Inquiry

In response to a Ministerial media release in November 2014 and information provided on the Tribunal's website, both giving notice of the Inquiry and calling for submissions, the Tribunal received 49 submissions from the following individuals and organisations. Some individuals and organisations provided more than one submission.

Name and organisation (as applicable)

Aitchison, Mr Brian C  
Australian Government Solicitor  
Baldwin, The Hon Bob, MP on behalf of (obo) Mr Peter Griffiths  
Ballard, Mr Rodney, obo John McFadden & others  
Barnes, Mr Mal, RAAF Ubon Reunion Recognition Group  
Barry, Mr Richard  
Becker, Mr Colin  
Bolton, Ms Diane, obo Mr Brian Bolton (Father)  
Buchholz, The Hon Scot, MP, obo Mr Robert Wiseman  
Cass, Mr Russell  
Cole-Clark, Mr Bruce, and Hooper, Mr Robert  
Dahler, Mr Max  
Dalton, Mr Alan  
Death, Mr Frederick  
Degiorgio, Mr Paul  
Department of Defence  
Department of the Prime Minister and Cabinet  
Edwards, Mr Graham  
Green, Mr Geoffrey  
Hutchinson, Mr Lawrence  
Jacobsen, Group Captain John, Retd  
Jennings, Mr Earle, National President, National Servicemen's Assoc of Australia Inc  
Joseph, Mr Vernon  
Joyce, The Hon Barnaby, MP, obo Mr John McFadden  
Larcombe, Mr R B  
Lawson, Mr Kevin  
Maconachie, Mr William  
Mansford, Brigadier George, AM, Retd  
Marshall, Mr Peter  
McKay, Mr Chris  
McKenzie, Mr John  
Melandri, Mr John  
Menkins, Ms Rosemary, MP, QLD State Member for Burdekin  
Morrissey, Mr Michael  
Pickering, Mr Lester

Pritchard, Mr Richard G, OAM  
Ratcliffe, Mr Dennis  
Roberts, Mr Bill, OAM, National Secretary, Vietnam Veterans' Federation of Australia  
Robertson, Mr Ian  
Rogers, Mr Michael  
Rose, Mr Geoffrey  
Sabben, Mr Dave, MG  
Scully, Mr John Lee, President RAAF Vietnam Veterans Sub-Branch VVAA (VIC)  
Snape, Mr William  
Swan, The Hon Wayne, MP, obo Mr Alan Cameron  
Taylor, Mr Angus, MP, Federal Member for Hume  
Tudge, The Hon Alan, MP, obo Mr Fred McLeod-Dryden  
Wicks, Ms Lucy, MP, obo Mr Wayne Balfe  
Wicks, Ms Lucy, MP, obo Mr Richard Cranna  
Vasta, Mr Ross, MP, Federal Member for Bonner

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In addition to the above listed individuals and organisations who provided submissions, in accordance with the Tribunal's Terms of Reference for this Inquiry, submissions provided to the Tribunal's *Inquiry into the eligibility for the Republic of Vietnam Campaign Medal* were also taken into account and the individuals and organisations who provided submissions to that Inquiry are listed below.

Name and organisation (as applicable)

Adams, Mr Paul  
Aitchison, Mr Brian C  
Alexander, Mr Tony, President Veterans' Support & Advocacy Service  
Angell, Dr Dorothy, OAM, President, Australian Civilian Medical/Surgical Teams  
Archer, Mr William L.  
Atkinson, Mr Michael, on behalf of his father Raymond William Atkinson  
Ball, Mr M. J., National Vice, President Vietnam Veterans' Association of Australia Inc  
Barnes, Mr Malcolm, Founder, RAAF Ubon Recognition Group  
Barnes, Mr Alan R.  
Barry, Mr Richard J., Organiser The 10th Intake, supported also by letters from the following:  
    Barlow, Mr Fred, Honorary Secretary, The National Servicemen's Association Australia NT Inc  
    Butler, Major General D.M. AO, DSO (Retd)  
    Cosgrove, General Peter AC, MC (Retd)  
    Coulton, Mr Mark MP, NSW Member for Parkes  
    Dominello, the Hon Victor, NSW Minister for Citizenship and Communities and Minister for Aboriginal Affairs  
    Fairbairn, Mr Stuart, Honorary Secretary, The National Servicemen's Association Australia, WA Branch Inc



Feeney, Senator the Hon David, Parliamentary Secretary for Defence<sup>13</sup>  
 Francis, the Hon Joe MLA, WA Minister for Emergency Services;  
 Corrective Services; and Veterans  
 Heffernan, Senator the Hon Bill, Senator for New South Wales  
 Humphries, Mr Kevin MP, NSW Member for Barwon  
 Jennings, Major Earle AM, RFD, Ed (Retd), National President, The National  
 Servicemen's Association of Australia Inc  
 Neervoort, Mr John  
 Newman, the Hon Campbell MP, Premier of Queensland  
 Newman, Captain Barrie M., RFD, ED (Retd) with Laurie, Major Geoffrey S.,  
 RFD (Retd)  
 Rogers, Mr Mike  
 Ronaldson, Senator the Hon Michael, Senator for Victoria  
 Sabben, Mr Dave MG  
 Williams, Senator John, Senator for New South Wales  
 Windsor, Mr Tony, MP, Federal Member for New England  
 Wright, Senator Penny, Senator for South Australia  
 Baulch, Mr Robert C., OAM  
 Beattie, Mr William  
 Benton, Mr Ross  
 Berridge, Mr Maxwell J.  
 Billington, Mr Brian E., PSM  
 Blackley, Mr Colin, spokesperson on behalf of himself, Mr Peter J. Fryers and  
 Mr Vincent Pezzano  
 Blake, Mr Peter  
 Boneham, Mr Leigh  
 Calway, Mr Brian  
 Carroll, Dr John  
 Coble, Mr Michael E.  
 Collins, Mr Peter T.  
 Connell, Mr John  
 Cowdrey, Warrant Officer David  
 Department of Defence  
 Department of Prime Minister and Cabinet  
 de Pierres, Mr Paul R. G.  
 Donnelly, Mr Ronald B.  
 Doolan, Rear Admiral Ken AO, RAN (Retd), National President, the Returned and  
 Services League of Australia  
 Dwyer, Mr David, Secretary, HMAS Sydney & Vietnam and Logistic Support  
 Veterans' Association Vic  
 Everitt, Mr Gary R., Member, Vietnam Veterans' Association of Australia, NSW  
 Branch  
 Gee, Mr Robin F., President, No 9 Squadron RAAF Assoc  
 Gratwick, Mr A.B. (Barry)  
 Hall, Warrant Officer Peter (Retd),  
 Hartney, Mr Mick  
 Hawkins, Mr Thomas J. (Jim)

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<sup>13</sup> Although the letter from Senator the Hon David Feeney was included with Mr Richard Barry's Submission 24, Senator Feeney did not specifically support Mr Barry's submission. Senator Feeney directed the Tribunal to conduct this [the RVCAM] Inquiry.

Hunter, Mr John  
Ignatiew, Mr Paul  
Jacobsen, Group Captain John (Retd)  
Jarvis, Mr Michael A.  
Johnston, Mr Garry G.  
Larcombe, Mr Rob  
Lawrence, Mr Trevor, President, Vietnam Veterans' Association of Australia,  
NSW Branch Inc  
Leahy, Mr Timothy  
Lees, Mr Allan J.  
Lister-Best, Mr John  
Long, Mr Robert  
Martin, Dr John  
McCombe, Mr Timothy, OAM, President, Vietnam Veterans' Federation  
McDonald, Mr Donald J.  
McGurgan, Mr Brian P.  
McKenzie, Mr Colin  
McLeod-Dryden, Mr Frederick, Navy Vietnam Sub-Section, Naval Association of  
Australia  
Moran, Mr Kerry  
Morley, Mr Allen, President, 131 Locators Association Inc  
Morrisey, Mr Michael T.  
Parsons, Warrant Officer II George (Retd)  
Pell, George, Archbishop of Sydney  
Pender, Mr Brian  
Potts, Mr Denys  
Prowse, Mr Michael, Member, Vietnam and Logistic Support Veterans' Association  
(Qld) Inc  
Ratcliffe, Mr Dennis  
Reilly, Mr John R.  
Richards, Mr Joseph D.  
Sherlock, Mr Michael P., BM  
Smith, Mr Michael F.  
Smith, Lieutenant Colonel Terence J. (Retd)  
Snowden, Mr John  
Stewart, Mr George  
Taplin, Mrs Helen M.  
Tonich, Mr Andie P.  
Wain, Major James (Retd)  
Wells, Mr John, OAM  
Zappia, Mr Tony, MP, Federal Member for Makin

## **APPENDIX 2 - Tribunal Sitting Days**

### **TRIBUNAL MEMBERS**

Presiding Member: Ms Christine Heazlewood  
Members: Emeritus Professor David Horner, AM  
Mr Richard Rowe, PSM

### **SITTING DAYS**

The Tribunal (as constituted) sat on the following days:

- 10 December 2014
- 18 February 2015
- 2 June 2015

# APPENDIX 3 – Legal Advice received from the Australian Government Solicitor

*the leading lawyers to government*  
**Sensitive: Legal**



Your ref. DL0235/2014  
Our ref. 14217054

**Australian Government Solicitor**  
4 National Circuit Barton ACT 2600  
Locked Bag 7246 Canberra Mail Centre ACT 2610  
T 02 6253 7000 DX 5678 Canberra  
www.ags.gov.au

3 February 2015

Mr Mark Sullivan  
Chair  
Defence Honours and Awards Appeal Tribunal  
CP2 – 3 – 061  
Locked Bag 7765  
Canberra BC ACT 2610

Canberra  
Sydney  
Melbourne  
Brisbane  
Perth  
Adelaide  
Hobart  
Darwin

Dear Mr Sullivan

## **Power to amend the eligibility criteria for the Republic of Vietnam Campaign Medal**

1. We refer to your letter of 9 December 2014 to Mr Ian Govey, seeking AGS's advice on whether the Australian Government has the legal ability to amend the eligibility criteria for the Republic of Vietnam Campaign Medal (RVCM), given that the Government of the Republic of Vietnam no longer exists.

### **SUMMARY ADVICE**

2. In our view, the Australian Government does not have the power to amend the existing eligibility criteria for the RVCM. This is because the award was created by the Government of the Republic of Vietnam and it was only that government that had the capacity to amend the eligibility criteria, or to give that capacity to the government of another country. The Australian Government was not given that power and cannot now be given that power, because the Government of the Republic of Vietnam no longer exists.

### **REASONS FOR ADVICE**

#### **Background**

3. You seek our advice as part of an inquiry currently being undertaken by the Defence Honours and Awards Appeals Tribunal (the Tribunal) on the feasibility of amending the eligibility criteria for the RVCM. The Tribunal has previously completed an inquiry into eligibility for the RVCM. While the earlier inquiry was intended to consider the application of the eligibility criteria, a number of submissions suggested that the eligibility criteria should be amended. In its report of 24 March 2014 (the Report),<sup>1</sup> the Tribunal recommended that no action be taken by the Australian Government to change the eligibility criteria for the award of the RVCM, although it

<sup>1</sup> Defence Honours and Awards Tribunal, *Report of the Inquiry into Eligibility for the Republic of Vietnam Campaign Medal* (24 March 2014).

**Sensitive: Legal**

**Office of General Counsel**

recommended a number of changes to the way the current eligibility criteria are interpreted and applied. The Government did not accept the Tribunal's recommendation that no action be taken by the Government to change the criteria for the award of the RVCM. The Government has now directed the Tribunal to undertake a further inquiry on the possibility of amending the eligibility criteria for the RVCM.

4. Our advice is only concerned with the Australian Government's legal ability to amend the existing eligibility criteria for the RVCM. It is not concerned with broader policy questions as to whether and how the eligibility criteria should be amended.

#### **The Australian honours and awards system**

5. Honours and awards in Australia originate from the Sovereign as *fons honorum* ('font of honour'). Medals and awards are created by Royal Warrant issued by the Queen, and administered by Letters Patent that set out the criteria for an award. Prior to 1975, Australians were recognised through the British Imperial awards system. However, Australia has had its own honours and awards system since 1975.
6. In the United Kingdom, orders and decorations granted by foreign sovereigns are not recognised by law. Applications for permissions for the wearing of foreign orders and medals by British subjects must be made to the Queen.<sup>2</sup> Similarly, the acceptance and wearing of awards from foreign sovereigns granted to Australian citizens generally requires the permission of the Queen.
7. In August 2012, the Queen approved a new version of *Guidelines concerning the acceptance and wearing of foreign honours and awards by Australians* (the Guidelines). The Guidelines allow Australian citizens to accept and wear foreign awards, subject to the conditions in the Guidelines. Relevantly, permission for the formal acceptance and wearing of foreign awards can be given by the Governor-General, on the advice of the Prime Minister or the Minister with portfolio responsibility for the Australian honours system.<sup>3</sup> Permission for the formal acceptance and wearing of foreign awards to Australian Defence Force personnel will, in the first instance, be subject to advice from the Minister for Defence, or his delegate, on whether or not it is appropriate for the permission to be given.<sup>4</sup> Foreign awards are to be worn in accordance with *The Order of Wearing Australian Honours and Awards*.<sup>5</sup>

#### **Establishment and eligibility criteria of the RVCM**

8. The RVCM is not an award established under the Australian honours system. It is a foreign award created by the (then) Government of the Republic of Vietnam and

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<sup>2</sup> See *Halbury's Laws of England*, vol 79 at [869].

<sup>3</sup> Para 3 of the Guidelines.

<sup>4</sup> Para 4 of the Guidelines.

<sup>5</sup> Para 9 of the Guidelines.

offered to a range of countries that supported the Government of the Republic of Vietnam during the Vietnam War, including Australia, New Zealand and the United States.

9. The historical background to the establishment of the RVCM is discussed in detail in the Tribunal's Report.<sup>6</sup> Relevantly, the RVCM was created by a Directive of the Government of the Republic of Vietnam dated 12 May 1964. The eligibility criteria for the RVCM were set out in a Directive of the Government of the Republic of Vietnam dated 1 September 1965, as follows:

**Chapter 1: Eligibilities**

Article 1: All military personnel of the [Royal Vietnam Armed Forces (RVNAF)] who have 12 month service in the field during war time, may claim for Campaign Medal award.

Article 2: The RVNAF personnel, who don't possess eligibilities prescribed in Art 1, but happen to be under one of the following circumstances, are qualified for Campaign Medal award:

- WIA (wounded in action).
- Captured in action by enemies or missing while performing his missions, but released later, or an escape has taken place.
- KIA or die while performing a missing entrusted.

The above anticipated cases must take place during the war.

Article 3: Allied soldiers assigned to the Republic of Vietnam after 6 months in war time with mission to assist the Vietnamese Government and the RVNAF to fight against armed enemies, are eligible for Campaign Medal decorations; they would be awarded with Campaign Medal under conditions anticipated in Article 2 of this Directive.

10. On 31 August 1966, the Chief of Joint General Staff for the RVNAF made orders awarding the RVCM to all Royal Australian military personnel eligible for the award. Article 2 of the orders provided that '[e]ligibility of individuals for the award will be determined by Royal Australian authorities .... No action is required by RVNAF authorities other than that outlined in Article 4 of this order [to provide ribbons of the RVCM to the Australian contingent].<sup>7</sup> Similar orders were also made in relation to other foreign forces.<sup>7</sup>
11. By a further Directive of 22 March 1966, a new Article 3 was substituted as follows:
- Article 3: Foreign military personnel serving in South Vietnam for six months during wartime and those serving outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF for six months in their struggle against an armed enemy will also be eligible for the award of the Campaign Medal.

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<sup>6</sup> See paras 10-29 of the Report.

<sup>7</sup> For example, similar orders were made on 24 March 1966 in relation to US military personnel.

Foreign authorities will determine eligibility of their personnel for this award. Foreign military personnel are also entitled to this award under the special conditions provided for in Article 2 of this Directive.

The Australian Embassy in Saigon reported that this amendment was specifically requested by the United States authorities to cover United States servicemen serving in waters off the coast of Vietnam, as well as the aircrews of aircraft operating out of Thailand and Guam.

12. In short, after the amendment to Article 3, foreign military personnel would be eligible for the RVCM if they had:
  - served in South Vietnam for six months during war time
  - served outside the geographic limits of South Vietnam contributing direct combat support to the RVNAF for six months, or
  - been wounded in action, captured in action but released or escaped, or killed, during the war.
13. On 24 June 1966, the Queen approved the request of the Australian Government for Australian troops to accept and wear the RVCM.

**Power to amend eligibility criteria**

14. As the RVCM was created by the Government of the Republic of Vietnam, the starting point is that the Government of the Republic of Vietnam would be the only body with the power to amend the eligibility criteria for the RVCM. The Australian Government will only have power to amend the eligibility criteria if it is possible to identify an amendment power which has been vested in it.

***Effect of Directives***

15. We have considered whether the various Directives of the Government of the Republic of Vietnam could be considered to grant the Australian Government any power to change the eligibility criteria. In particular, Article 3 (as amended) provides for foreign authorities to determine the eligibility of their personnel for the award.
16. We do not think this could be considered a power to change the eligibility criteria for the RVCM. In our view, the power conferred on foreign authorities by Article 3 is a power to determine which of their personnel meets the criteria established by the Government of the Republic of Vietnam. While this allows the Australian Government (and other governments) a measure of discretion in interpreting and applying the criteria (eg, to determine whether a person was 'wounded' in action), we do not think it can be said to extend to actually amending those criteria.
17. This view is supported by the amendment to Article 3 requested by the United States. Prior to this amendment, orders had been made for the eligibility of individuals for the RVCM to be determined by their relevant authorities. It would not have been necessary for the United States to request the Government of the Republic of Vietnam to amend the criteria, if the power of the United States to

determine the eligibility of individuals extended to amending the eligibility criteria themselves.

***Effect of Government of the Republic of Vietnam ceasing to exist***

18. We have also considered whether the Australian Government could be considered to have power to amend the eligibility criteria, given that the Government of the Republic of Vietnam no longer exists. In our view, the fact that the Government of the Republic of Vietnam no longer exists does not have the result of conferring any power on the Australian government to change the eligibility criteria for the RVCN.
19. In some cases where a State ceases to exist, another State can 'succeed' to the predecessor State's rights and obligations (eg, rights and obligations under an international treaty to which the predecessor State was a party).<sup>8</sup> The principles governing State succession are complex, and it is not necessary to consider them in detail for the purposes of this advice. It is sufficient to say that we doubt whether the principles of State succession would apply to the ability to amend the eligibility criteria for an award created by a predecessor State. Moreover, even if this was the kind of power to which another State could 'succeed', it would be very difficult to argue that Australia should be the successor State.
20. We are not aware of any other legal principle that would result in the Australian Government having power to amend the eligibility criteria for the RVCN simply because the Government of the Republic of Vietnam ceased to exist. In our view, the Government of the Republic of Vietnam was the only body that had power to amend the eligibility criteria; as that government no longer exists, there is no longer any body that has power to amend the criteria for the RVCN.

***Requirement of approval for foreign awards***

21. We note for completeness that there may also be a further question of whether any change to the eligibility criteria of the RVCN would require fresh approval for the acceptance and wearing of the RVCN under the Guidelines. We think there is an argument that any significant change in the criteria of the RVCN would mean that it was, in effect, a different award to that for which approval was previously given by the Queen. This would particularly be so in the present case if amendments were proposed to reduce the length of service required from six months, given that the length of qualifying service appears to have been a significant factor in the initial decision to accept the award.<sup>9</sup> Ultimately, however, this issue is unlikely to arise

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<sup>8</sup> See, eg, the *Vienna Convention on Succession of States in Respect of State Property, Archives and Debts* (done at Vienna on 8 April 1983, not yet in force). See also the discussion in Gillian D Triggs, *International Law: Contemporary Principles and Practices* (2<sup>nd</sup> ed, 2011).

<sup>9</sup> See the background set out in the Tribunal's Report at paras 11-13. A letter from Buckingham Palace dated 24 June 1966, recording the Queen's informal approval to the request, also refers expressly to 'Australian troops who have completed six months service' being eligible for the RVCN.



because it is not apparent that any country now has the capacity to amend the eligibility criteria.

**CONCLUDING REMARKS**

22. We understand that you have consulted with the Office of International Law (OIL) in the Attorney-General's Department in relation to this request for advice. We understand that OIL has also not identified any international legal obligation relevant to Australia's ability to amend the eligibility criteria for the RVCM.
23. Please contact us if you would like to discuss the advice or if we can be of further assistance.

Yours sincerely



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# APPENDIX 4 – Government of the Republic of Vietnam Directive Nr HT.655-430, 1 September 1965<sup>14</sup>

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## RESTRICTED

REPUBLIC OF VIETNAM  
DEPARTMENT OF NATIONAL DEFENSE  
JOINT GENERAL STAFF  
REPUBLIC OF VIETNAM ARMED FORCES

### DIRECTIVE

Pertaining to awarding of  
Campaign Medal.

DECORATION OFFICE

HT. 655 - 430

Reference to Decree No. 149/SL/CT dated May 12, 1964 creating  
"Campaign Medal"

Decree No. 332/QL dated Nov 11, 1964 prescribing  
the decoration awarding authority.

§

This directive has a purpose to prescribe the eligibilities  
authorities, and procedures for awarding Campaign Medal.

The directive consists of 4 chapters:

- Chapter 1 : Eligibilities
- Chapter 2 : Authorities
- Chapter 3 : Procedures
- Chapter 4 : Miscellaneous

#### CHAPTER I : ELIGIBILITIES

Article 1 : All military personnel of the RVNAP who  
have 12 month service in the field during war time, may claim  
for Campaign Medal award.

Article 2 : The RVNAP personnel, who don't possess the  
eligibilities prescribed in Art.1, but happen to be under one of  
the following circumstances, are qualified for Campaign Medal  
award:

- WIA (wounded in action)
- Captured in action by enemies or missing while  
performing his missions, but released later, or an escape has  
taken place.
- KIA or die while performing a mission entrusted.

The above anticipated cases must take place during the  
war.

Article 3 : Allied soldiers assigned to the Republic  
of Vietnam after 6 months in war time with mission to assist the  
Vietnamese Government and the RVNAP to fight against armed  
enemies, are eligible for Campaign Medal decorations; they would  
be awarded with Campaign Medal under conditions anticipated in  
Article 2 of this Directive.

#### CHAPTER 2 : AWARDDING AUTHORITIES

Article 4 : The Chief of Joint General Staff of the  
Republic of Vietnam Armed Forces is authorized to issue Campaign  
Medal awarding decision to all eligible military personnel.

Article 5 : If need be, the Chief of Joint General Staff of  
the RVNAP may delegate awarding authority to his subordinate  
troop commandants.

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<sup>14</sup> Copies of the GRV directives of 12 May and 11 November 1964 are not available.

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Article 6 : The Chief of Joint General Staff of the RVNAP has to confer with various friendly countries before awarding Campaign Medal to the troops of respective nations.

Campaign Medal awarding decision can only be made when an agreement between the host government and the respective government has been reached on prescribed principles.

In case troops from a friendly country participate in the Vietnam conflict in great numbers, the Chief of Joint General Staff of the RVNAP may issue a Campaign Medal general awarding decision for these troops.

Awarding procedures applied for each individual who possesses appropriate eligibilities will be accordingly made by various military authorities from the respective country.

### CHAPTER 3 : PROCEDURES

Article 7 : Campaign Medal is awarded according to unit commander's proposal.

Article 8 : Campaign Medal award proposal is made by using one of these two following forms:

- One form used for military personnel having requirements prescribed in Art. 1.

- Another form used for military personnel possessing requirements prescribed in Article 2.

Article 9 : Recommendations are made monthly and forwarded to respective awarding authorities through channel by using either forms as prescribed in Article 8.

Military personnel proposed for decorations must possess all prescribed eligibilities as of the last day of the preceding month.

Each recommendation must contain unit commander's signature and the signature of the NCO who administers the military personnel's records.

Article 10 : All recommendations established for eligible military personnel as prescribed in Article 2 of this Directive must be supported by following documents:

- A copy of Awarding decision of the Order of Purple Heart.

- A copy of unit commander's report concerning circumstances relating to imprisonments, escapes or releases made by enemies.

- A copy of death certificate if the respective soldier was killed in action or die as the nature of his mission dictated.

Article 11 : Allied soldiers who have all conditions required will be recommended for Campaign Medal awarding as mentioned in Articles 7, 8 and 9 or particularly required by Article 8 of this note.

As to allied soldiers eligible for decorations as required by Article 2 of this Directive, the recommendations do not need supporting documents as prescribed in Article 10.

Campaign Medal awarding recommendations for eligible allied soldiers will be formed by various respective friendly countries and submitted directly to JGS/RVNAP.

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Article 12 : Upon reception of recommendations, awarding authority begins to conduct a study for each recommendation, discards the recommendations which do not meet requirements as prescribed as in Article 2 of this Directive, issues awarding decisions for those who possess all prescribed requirements, and returns approved recommendations to original units with awarding decisions attached hereto for filling in the recipient's records.

Article 13 : The recipients may wear the medal upon his formal reception of awarding decision.

Premature and unofficial awardings subject to final certifications shall not be approved.

Article 14 : All military personnel eligible for Campaign Medal Decorations who have not been awarded, may claim for their rights by submitting demands to their respective authorities through appropriate channels.

### CHAPTER 4 : MISCELLANEOUS

Article 15 : Campaign Medal decorations may be awarded to military personnel in different wars.

Article 16 : Each soldier can be awarded one time in each war.

Article 17 : Each period of war has a different annual inscription cluster which shows the year in which the war takes place and that in which the war ends.

Article 18 : Annual inscription is engraved in relief on a rectangular cluster. The cluster is obliquely pinned either on the cloth with pendant or on the ribbon w/o pendant.

Article 19 : The Chief Joint General Staff of the RVNAP proscribes the lengths of time which will be called periods of wartime.

Article 20 : Military personnel eligible for decorations will be offered a ribbon of Campaign Medal w/o pendant.

Ribbons with pendant will be procured by the recipients themselves.

Article 21 : Campaign Medal is awarded w/o certificate.

Article 22 : Under no circumstance should the Campaign ribbons awarded in a ceremony; upon reception of the awarding decisions the Campaign Medal is automatically worn by the recipients w/o further orders.

Article 23 : Campaign Medal conformation and methods applied for medal wearing will be prescribed by a Directive the issuance of which will be coming soon.

Article 24 : This Directive will take retroactive effect starting from March 8 1949 and the same time rescind or replace Directive No. HT. 655/430 dated June 23rd 1965.

Saigon September 1 1965  
Major-General NGUYEN-HUU-CO  
Chief of Joint General Staff of the  
Republic of Vietnam Armed Forces  
(signed and sealed)

## RESTRICTED

**APPENDIX 5 – Government of the Republic of Vietnam  
Memorandum Nr 183/TTM/QD, 31 August 1966**

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CHIEF OF JOINT GENERAL STAFF  
Republic of Vietnam Armed Forces

1

REPUBLIC OF VIETNAM  
-----  
MINISTRY OF DEFENSE  
-----  
JOINT GENERAL STAFF  
RVNAF  
-----  
ADJUTANT GENERAL  
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Nr: 183 /TTM/QD/CDBT

REFERENCES :

- Decree Nr 149-SL/CT dated 12 May 1964 establishing the 'Vietnam Campaign Medal',
- Directive Nr HT-655-430 dated 1 September 1965 outlining criteria and procedures for the award of the 'Vietnam Campaign Medal',
- Memorandum Nr 2655/TTM/VP/PCF/3 dated 8 October 1965 prescribing the limitation of authority for the award of the 'Vietnam Campaign Medal',

O R D E R S :

ARTICLE 1.- The 'Vietnam Campaign Medal' with device 183 is awarded to all Royal Australian military personnel eligible as prescribed in Directive Nr HT-655-430 dated 1 September 1965 as changed by amendment dated 22 March 1966, and Memorandum Nr 2655-TT/VP/PCF/3 dated 8 October 1965, Joint General Staff Republic of Vietnam Armed Forces.

ARTICLE 2.- Eligibility of individuals for the award will be determined by Royal Australian authorities and will be recorded in the personnel record of eligible personnel in accordance with procedures currently being applied by Royal Australian Forces. No action is required by RVNAF authorities other than that outlined in Article 4 of this order.

ARTICLE 3.- The precedence and manner of wearing the 'Vietnam Campaign Medal' by Royal Australian military personnel will be determined by Royal Australian authorities.

ARTICLE 4.- The Joint General Staff, RVNAF, is responsible for providing the ribbons of the Vietnam Campaign Medal for Royal Australian personnel who are awarded this medal. A bulk allocation of ribbons will be furnished the Royal Australian Contingents in Vietnam Headquarters, on a quarterly basis for this purpose. Royal Australian authorities will determine quarterly requirements and advise the Joint General Staff, RVNAF, of their needs./.

SAIGON, August 31, 1966

Lieutenant General CAO-VAN-VIEN  
Chief of the Joint General Staff, RVNAF



Distribution : Royal Australian Armed  
Forces in Vietnam, HQS.

*Copy received thru Dept of Army  
18/11*

## **APPENDIX 6 – Additional material examined by the Tribunal**

### **AUSTRALAIAN COMMONWEALTH GOVERNMENT PUBLICATIONS**

#### **Acts**

*Defence Act 1903* as amended

*Defence Legislation Amendment Act 2010*

#### **Reports**

Defence Honours and Awards Appeals Tribunal Report of the *Inquiry into Eligibility for the Republic of Vietnam Campaign Medal*, dated 24 March 2014.

### **UNPUBLISHED GOVERNMENT RECORDS**

#### **Department of Defence**

Memorandum from Secretary of the Department of Defence to the Secretaries of the Departments of the Navy, Army and Air Force dated 16 September 1966

#### **The Australian Army**

Military Board Instruction (Army) MBI 102-4 dated 23 December 1968.

### **RECORDS OF OTHER GOVERNMENTS**

#### **Republic of Vietnam**

Government of the Republic of Vietnam, Ministry of Defence, Decree Nr 149-SL/CT, dated 12 May 1964.

Government of the Republic of Vietnam, Ministry of Defence, Decree Nr 332/QL, dated 11 November 1964.

Government of the Republic of Vietnam, Directive Nr HT. 655-430, dated 1 September 1965.

Government of the Republic of Vietnam, Ministry of Defence, Memorandum Nr 183/TTM/QD, dated 31 August 1966.