



Australian Government

Defence Honours and Awards Appeals Tribunal

Smith and the Department of Defence Re: Kirby [2016] DHAAT 20 (1 August 2016)

File Number(s) 2015/014

Re **Lieutenant Colonel Harry Smith SG MC (Retd)**
on behalf of Warrant Officer Class 2 John William Kirby
DCM (dec)
Applicant

And **Department of Defence**
Respondent

Tribunal Mr M. Sullivan AO (Chair and Presiding Member)
Rear Admiral J. Goldrick AO, CSC RAN (Retd)
Brigadier K. O'Brien CSC (Retd)
Ms J. Schwager AO
Mr R. Rowe PSM

Hearing Dates 1, 2 and 3 March 2016

DECISION

On 1 August 2016 the Tribunal decided to recommend to the Minister that the decision of the Chief of Army to refuse to recommend Warrant Officer Class 2 John William Kirby for the Victoria Cross for Australia be affirmed.

CATCHWORDS

DEFENCE HONOUR – *Defence honour – most conspicuous gallantry – in action – self sacrifice – pre-eminent acts of valour – extreme devotion to duty*

LEGISLATION

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

Gallantry Decorations Regulations 1991

Defence Force Regulations 1952 – Reg 93B Sch 3

REASONS FOR DECISION

Introduction

1. The applicant, Lieutenant Colonel Harry Smith SG MC (Retd) seeks review of a decision of the Chief of Army to refuse to recommend the late Warrant Officer Class 2 (WO2) John William Kirby for the Victoria Cross for Australia (VC) for his actions during the Battle of Long Tan on 18 August 1966 in Vietnam. At the time of the battle, WO2 Kirby served as the Company Sergeant Major (CSM) of D Company, 6th Battalion, the Royal Australian Regiment (6 RAR). WO2 Kirby was awarded the Distinguished Conduct Medal for his actions during the Battle.

2. Lieutenant Colonel Smith held the rank of Major during the battle, and was the Officer Commanding D Company 6 RAR.

The Battle of Long Tan

3. On 18 August 1966, D Company 6 RAR was engaged in one of Australia's heaviest actions of the Vietnam War, in a rubber plantation near the village of Long Tan. The 108 soldiers of D Company held off a large enemy force for over three hours during a tropical downpour. They were greatly assisted by a timely ammunition resupply by Royal Australian Air Force (RAAF) helicopters, close fire support from artillery, and the arrival of Armoured Personnel Carriers (APCs), together with reinforcements from other elements of the battalion. Seventeen Australians were killed and 25 wounded, with one of the wounded dying several days later. A full description of the Battle, developed by the Tribunal from a range of sources, is provided at **Attachment A**.

Recognition for D Company 6 RAR

4. On 21 December 1966, the first set of Imperial gallantry awards for Long Tan was announced (further awards were announced later). In 1968, D Company 6 RAR was awarded a United States Presidential Unit Citation (PUC) for its actions at Long Tan. The PUC is the highest unit award in the US Honours and Awards System.

5. The individual awards appeared to some, including Lieutenant Colonel Smith, to be less in number, and of lower standing, than expected. The documents recording the original Imperial award recommendations were filed, and in accordance with standard procedure they were released for public access after 30 years. In 1996, Lieutenant Colonel Smith accessed the records to see what had happened to the award proposals he recalled discussing with CO 6 RAR but which had, he thought, been changed or ignored. He discovered that there was no paperwork for some and paperwork for others showed the proposed awards had been downgraded. He and others began to lobby Government to rectify this perceived injustice – to have the honours he originally recommended awarded and to approve a number of South Vietnamese awards also thought to have been rejected at the time.

6. Following a number of representations to Government from Lieutenant Colonel Smith, between 2004 and 2009 there were a range of reviews in relation to the

recognition for those who served at the Battle. The details of those reviews and the awards given are detailed at **Attachment B**.

Application for review

7. In 2011, Lieutenant Colonel Smith made submissions to the Tribunal's *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour* (the Valour Inquiry). In March 2013, these submissions and others were referred by the then Government to the Chief of the Defence Force and the respective Service Chiefs for consideration.

8. In November 2014, the Chief of Army rejected Lieutenant Colonel Smith's submissions. Lieutenant Colonel Smith lodged his application for review of the Chief of Army's decision regarding WO2 Kirby to the Tribunal on 3 April 2015. Despite any previous considerations, Lieutenant Colonel Smith has a statutory entitlement under the *Defence Act 1903* (the Defence Act) to seek review of the Chief of Army's most recent decision in the Tribunal.

Tribunal jurisdiction

9. Pursuant to ss 110VB(1) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision relating to a Defence honour 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 Defence Force to refuse to recommend a person for a Defence honour in response to an application.

10. Regulation 93B of *Defence Force Regulations 1952* defines a Defence honour as those honours set out in Part 1 of Schedule 3. Included in the Defence honours set out in Part 1 is the Victoria Cross for Australia. The Tribunal considered that the Chief of Army's refusal to recommend WO2 Kirby for the VC constitutes a reviewable decision. Therefore, the Tribunal has jurisdiction to review this matter.

11. In accordance with s110VB(1) of the Defence Act, as the matter under review concerns 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

12. In accordance with its *Procedural Rules 2011*, on 28 May 2015, the Tribunal wrote to the Secretary of the Department of Defence informing him of Lieutenant Colonel Smith's application for review and requesting that he provide a report. On 7 August 2015, Director General Personnel-Army, on behalf of the Secretary, provided the Tribunal with a report. This report and other documents were exchanged with Lieutenant Colonel Smith and additional statements were obtained from various witnesses and sources. Hearings were held in Queensland from 1 to 3 March 2016 when the Tribunal received oral evidence and submissions from Lieutenant Colonel Smith, representatives from the Department of Defence and other witnesses. Further details in relation to the conduct of the review, including a list of witnesses, are provided at **Attachment C**.

13. A bibliography of the research material gathered by the Tribunal during the course of the review is provided at **Attachment D**.

Eligibility Criteria for the Victoria Cross for Australia

14. The VC was established by Letters Patent on 15 January 1991 to be:
*the highest decoration for according recognition to persons who, in the presence of the enemy, perform acts of the most conspicuous gallantry, or daring or per-eminant acts of valour or self-sacrifice or display extreme devotion to duty.*¹

15. Conditions for the honour are set out in 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 per-eminant act of valour or self-sacrifice or extreme devotion to duty in the presence of the enemy.*²

Warrant Officer Kirby's service

16. John William 'Jack' Kirby was born on 11 February 1935 in Sydney. As a teenager, he was apprenticed to a motor mechanic and rose to sergeant in the Citizen Military Forces' Regimental Cadets.

17. At the age of 18, Kirby enlisted in the Australian Regular Army and served in Korea with the 1st Battalion, Royal Australian Regiment (1 RAR) in 1954-55. He was in Malaya with 3 RAR in 1957-59 for part of the Malayan Emergency. During this conflict, Corporal Kirby was mentioned in the press in May 1959 for his bravery in leading three men on a forced march to obtain supplies for comrades at a remote jungle camp. Kirby was promoted to sergeant in 1961 and served from 1963 to 1965 as an instructor at the Far East Land Forces Jungle Warfare School at Kota Tinggi, Johore, Malaysia. In June 1964 and March-April 1965 he was detached for service in Sarawak, Borneo.

18. Kirby was posted to 6 RAR in July 1965 and promoted to temporary Warrant Officer Class 2 in March 1966. The battalion deployed to South Vietnam in June, operating from the Task Force base at Nui Dat, in Phuoc Tuy province. Appointed CSM of D Company, the experienced Kirby soon became popular with national servicemen and regular soldiers alike; they respected him for both his experience and abilities, and affectionately nicknamed him 'Big Jack'.³

19. In his role as CSM, his duties included general support to his company commander in non-commissioned officer and soldier management, and the general

¹ *Commonwealth of Australia Gazette (CAG) No. S25 – Victoria Cross Regulations* – dated 4 February 1991.

² *Ibid*

³ Ashley Ekins and Ian McNeill, *Australian Dictionary of Biography, Kirby, John William* <http://adb.anu.edu.au/biography/kirby-john-william-10750> - accessed 20 May 2015

supervision of discipline in the company. During operations the CSM is responsible for ammunition distribution and for close supervision of the company headquarters support elements.

20. On 21 December 1966, WO2 Kirby was awarded the Distinguished Conduct Medal (DCM) for his service at the Battle of Long Tan. Under the Imperial system of honours and awards, the DCM was the second highest gallantry award available to non-commissioned officers of the Australian Army, second only to the Imperial Victoria Cross.

21. Tragically, on 6 February 1967 during Operation TAMBORINE, misdirected artillery rounds from the New Zealand 161st Field Battery fell on D Company's position, killing a number of Australians, including WO2 Kirby, five days short of his 32nd birthday. Kirby's remains were returned to Australia. He was survived by his wife.⁴

Warrant Officer Kirby's actions

22. Part IV of Australia's Official History of the Australian Army and the Vietnam War gives a detailed description of the Battle of Long Tan. Kirby's actions during the ammunition re-supply are described as follows:

At 6 p.m. two RAAF helicopters ... arrived in the area of the Company. Guided by the red smoke and with a lucky break in the clouds, they hovered above ten metre high rubber trees surrounding a small clearing... Warrant Officer Kirby, the Company Sergeant Major, immediately began an ammunition distribution. Rounds for the machine guns had been pre-loaded in belts, but the rifle ammunition came in bandoliers. This hampered Kirby's work and meant that the soldiers had to try to keep their ammunition clean as they reloaded their twenty-round rifle magazines while lying in the rain and slush.⁵

23. The official history also indicates that sometime after the ammunition resupply, the enemy attempted to establish a heavy machine gun post only 50 metres in front of the perimeter. Kirby is recorded in the official history as having moved out and personally silenced the weapon by killing the crew. Kirby is also recorded in the official history as being 'an inspiration' and that in spite of the volume of enemy fire, 'he moved around the company area, offering encouragement, apportioning ammunition, and helping the wounded'.⁶

The award of Warrant Officer Kirby's Distinguished Conduct Medal

24. The Distinguished Conduct Medal (DCM) was instituted by Queen Victoria by Royal Warrant dated 30 September 1862, and was created to recognise 'distinguished conduct in the field'. The eligibility criteria were amended over time by subsequent

⁴ Ibid

⁵ Ian McNeill, *To Long Tan, The Official History of the Australian Army and the Vietnam War 1950-1966*, Allen & Unwin, St Leonards, 1993, p322

⁶ Ibid, p328.

Royal Warrants. The Royal Warrant of 11 October 1948, which was the current instrument at the time of the battle, stated that the honour could be granted to Warrant Officers, non-commissioned officers and men and equivalent ranks for 'distinguished conduct in the field'.⁷

25. The Distinguished Conduct Medal was a very prestigious award. Under the Imperial system of honours and awards, the only higher award for gallantry in the face of the enemy for non-commissioned officers, men and equivalent ranks was the VC.

26. The citation for WO2 Kirby's DCM reads as follows:

*Warrant Officer John William KIRBY was the Company Sergeant Major of D Company Sixth Battalion, The Royal Australian Regiment during the battle of LONG TAN in The Republic of South Vietnam on 18th August 1966. Warrant Officer KIRBY showed outstanding bravery throughout the three hours of the battle, during which time the Company was being swept with machine gun and small arms fire, and subjected to continuous attacks by superior Viet Cong forces. In an area where virtually any movement resulted in a hail of fire from the enemy, he continually moved around the company and platoon areas, distributing ammunition and organising the collection of the wounded and their movement to the Company Aid Post. At times he went outside the perimeter to assist the evacuation of the wounded from the forward platoons. At one stage he personally destroyed a heavy machine gun post being set up 50 metres from the perimeter. He organised the resupply of ammunition by helicopters and continued with the distribution of ammunition and movement of the wounded until the Company was relieved. Then, when most of the Company could relax, he continued working at full pressure for another five hours, organising and supervising the loading and evacuation of the casualties. His gallant performance, without any thought for his own safety inspired and assisted D Company to defeat an enemy force much larger than the company.*⁸

27. From the evidence available, the Tribunal was able to ascertain that on 28 August 1966, the nomination in respect of WO2 Kirby's DCM was signed by the Commanding Officer of 6 RAR, Lieutenant Colonel Colin Townsend. On 10 September 1966, it was received at Headquarters First Australian Task Force for the attention of the Task Force Commander, Brigadier Jackson. On 25 September, it was forwarded to Saigon for the attention of the Commander Australian Forces Vietnam (COMAFV), who received it on 26 September 1966. On 2 October 1966 it was subsequently forwarded to Army Office in Canberra for subsequent endorsement by the Ministers for Army and Defence, the Prime Minister and approval by the Sovereign, which was granted on 21 December 1966.⁹

Lieutenant Colonel Smith's submissions

28. In his 2009 submission to the old Tribunal's Inquiry, Lieutenant Colonel Smith stated that on return to base on the evening of 21 August 1966, he was called at around

⁷ Royal Warrant, 11 October 1948, NAA: A4531: 101/9 Part 1.

⁸ Form AF-W3121 – J W Kirby, NAA: A1944, 133/3/26.

⁹ File correspondence, NAA: A1945, 133/3/26.

midnight by Lieutenant Colonel Townsend who ordered recommendations to be submitted by the next afternoon. Lieutenant Colonel Smith stated that he asked for more time to consider the awards but was told that ‘Canberra urgently required awards to placate the public outcry at the loss of so many young National Servicemen’.¹⁰

29. Lieutenant Colonel Smith stated that the next morning, he met with his platoon commanders and CSM and, aware that there was a quota and a need to be conservative, he developed a list of 16 recommendations, including Kirby for the DCM.

30. Lieutenant Colonel Smith stated that had he had more time to interview witnesses, rather than the 12 hours given to him, he would have cited at least his CSM Jack Kirby for the Victoria Cross. He went on to state that:

*‘Big Jack’ Kirby disregarded his own safety while braving enemy fire to distribute ammunition and carry wounded over his shoulder back to the Aid Post. He went forward and shot an enemy machine gun crew, and moved around and gave encouragement and to help soldiers.*¹¹

31. While the above comments were made about WO2 Kirby in Lieutenant Colonel Smith’s written 2009 submission, a VC for WO2 Kirby was not within the ambit of claims set out in that submission. Instead, that submission sought recognition for the 12 other Long Tan veterans whose actions are currently under review by the Tribunal.¹²

32. In his oral submission to the old Tribunal’s Inquiry, Lieutenant Colonel Smith stated:

*Jack Kirby was recommended for a DCM, but I am sorry now it wasn’t the VC...I vaguely recall we sort of thought about it and thought “oh no this isn’t like Pine Ridge (sic), well you can’t compare Long Tan to Pine Ridge, so you can’t go to VC”, but what has happened in the meantime changes my mind somewhat...I certainly would like to be given the opportunity to re-look at some of those that were scrubbed unofficially before they even got to paper, I would like to see a Victoria Cross for Jack Kirby and a DCM for Bob Buick.*¹³

33. In his submission of 8 December 2011 to the Valour Inquiry regarding Kirby, Lieutenant Colonel Smith stated that when the Tribunal announced the Valour Inquiry, he then decided to raise the prospect of a VC for Kirby again, and that he and others considered Kirby’s actions as valourous as those of Trooper Mark Donaldson VC, and that Kirby met the criteria of ‘individual conspicuous gallantry’ and ‘extreme devotion to duty in the face of the enemy’.¹⁴

¹⁰ Defence Honours and Awards Tribunal *Inquiry into unresolved recognition issues for the Battle of Long Tan*, Submission 9 - Lieutenant Colonel Harry Smith SG MC (Retd), p18.

¹¹ Ibid, p21.

¹² Ibid, Annex A.

¹³ Oral Submission to the Defence Honours and Awards Tribunal’s *Inquiry into unresolved recognition issues for the Battle of Long Tan*, Lieutenant Colonel Harry Smith SG MC (Retd), 1 April 2009.

¹⁴ Defence Honours and Awards Appeals Tribunal *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour*, Submission 191 – Lieutenant Colonel Harry Smith SG MC (Retd), p4.

34. Lieutenant Colonel Smith submitted that the lack of a VC in significant actions such as the Battle of Long Tan, the Battles of Fire Support Bases Coral and Balmoral and Binh Ba fought by some of the 16 Task Force battalions, is indicative of the attitude to awards in Vietnam, where his 'recommended DSO was downgraded to an MC in favour of COMATF [Brigadier Jackson], and his Platoon Commanders were downgraded to MIDs' Further, he believed that 'Kirby suffered from the same awards philosophy that saw many high awards go to senior officers, not those who fought in combat'.¹⁵

35. Lieutenant Colonel Smith submitted that as Lieutenant Colonel Townsend was not present for much of the battle, he (Smith) should have been the officer that signed the forms, and had that been the case, Kirby would have been nominated for a VC.¹⁶

36. Lieutenant Colonel Smith also submitted that when the urgently required citation was written on 22 August 1966, many of WO2 Kirby's other gallant exploits were not known. This included Kirby's advice and personal support to soldiers as he moved around, and the fact that he personally carried wounded over his shoulder back to the Aid Post under enemy fire, as is now depicted in a painting by Ian Grieves, now on display in the Maryborough Military Museum with Kirby's medals. Lieutenant Colonel Smith stated that had there been more time to fully investigate his performance, rather than the few hours given to him by Townsend, then his citation would have reflected these other valorous feats.¹⁷

37. In his oral submission of 1 March 2016, Lieutenant Colonel Smith confirmed his recollection that he originally intended to nominate WO2 Kirby for a VC, and that after he had raised the matter of a VC with Lieutenant Colonel Townsend, he was directed to prepare a recommendation for a DCM.¹⁸

38. After questioning by the Tribunal, Lieutenant Colonel Smith confirmed that there was nothing in the written citation that he would have changed if Kirby was to be considered for a VC as distinct from the DCM.¹⁹

Other accounts

39. In conducting its merits review of WO2 Kirby's actions at Long Tan, the Tribunal was able to access a broad range of written material. At hearing, the Tribunal also had the benefit of hearing directly from Lieutenant Colonel Smith and some of the surviving men of D Company 6 RAR.

40. Lieutenant Colonel Smith referred the Tribunal to a website, set up by Mr Martin Walsh of Red Dunes Publishing, which contains various accounts of Kirby's

¹⁵ Ibid, p5.

¹⁶ Ibid, p6.

¹⁷ Ibid, Attachment.

¹⁸ Oral submission, Lieutenant Colonel Harry Smith SG MC (Retd), 1 March 2016.

¹⁹ Ibid.

actions at the Battle of Long Tan. These accounts talk about Kirby's movement around the company area during the battle, distributing ammunition, providing encouragement to other members, and the rescue of 12 Platoon soldier, Private Harley Webb.²⁰

41. Other published accounts are replete with examples of Kirby's role in distributing ammunition and encouraging his men. These include accounts by Private Graham Smith, of Company Headquarters, Private John Heslewood of 11 Platoon, Terry Burstall's book, *The Soldiers Story, the Battle of Xa Long Tan*²¹, Lieutenant Colonel Charles Mollison's *Long Tan and Beyond, Alpha Company 6 RAR 1966-67*,²² Paul Ham's *Vietnam, the Australian War*,²³ Lex McAulay's *the Battle of Long Tan*,²⁴ Bob Grandin's *The Battle of Long Tan, as told by the Commanders*,²⁵ Michael Caulfield's *The Vietnam Years*²⁶ and Lieutenant Colonel Smith's recent book, *Long Tan, the Start of a Lifelong Battle*.²⁷

42. In a 1992 interview for Bruce Horsfield's documentary, *Long Tan, the Survivor's Account*, Major Morrie Stanley MBE (Retd), who was the Forward Observer (FO) for the Artillery at Long Tan said the following about Kirby, which is consistent the other accounts about Kirby moving around the battlefield under fire, distributing ammunition:

I clearly remember everyone in the company was running short of small arms ammunition. I was well aware that I had some, and Willie [Corporal Willie Walker] had some, but we didn't have a particular use for it. We were too busy. But Jack Kirby, a very fine company sergeant major, he came to me, and he was such a polite man, I believe he said "excuse me, Sir, have you any spare ammunition" I couldn't understand why he would ask in such a polite way. I said that he should help himself from my pack, and he did that, and he said, I am leaving you with one magazine. I said "fine Jack" and he got some ammunition from Willie Walker. That man, he was later killed, and you people know that. But he couldn't help being polite. And a very brave man.

In the later stages of the contact, when we were all in this newfound base of ours with the wounded and so on, people from the platoons had joined us and far more people were around where I was it had become the headquarters. But it was at that time that there were two incidents, one which impressed me, and one which worried me. The first was, there was a, most of the men were young men of the age of 20 or so. One man I heard saying "steady, aim, fire." I think

²⁰ Martin Walsh, Jack Kirby – An unsung hero of the Battle of Long Tan, <http://battleoflongtan.reddunefilms.com/2011/03/csm-jack-kirby-unsung-hero-of-the-battle-of-long-tan/published-March-2011>, accessed 20 May 2015.

²¹ Terry Burstall, *The Soldiers Story, the Battle of Xa Long Tan*, University of Queensland Press, St Lucia, 1986, pp58, 62, 90, 95, 99, 102-107, 122, 147.

²² Charles Mollison, *Long Tan and Beyond: Alpha Company 6 RAR 1966-67, Cobbs Crossing Publications*, Woombye, 2005, pp150, 153.

²³ Paul Ham, *Vietnam, the Australian War*, Harper Collins, Sydney, 2007, pp237-238.

²⁴ Lex McAulay, *The Battle of Long Tan*, Century Hutchinson Australia, 1986, p95.

²⁵ Bob Grandin, *The Battle of Long Tan, as told by the Commanders*, Allen & Unwin, St Leonards, 2004, pp184, 198, 205.

²⁶ Michael Caulfield, *The Vietnam Years*, Hachette Australia, Sydney, 2007, pp291-292, 299, 311, 312.

²⁷ Harry Smith, *Long Tan, The Start of a Lifelong Battle*, Big Sky Publishing, Newport, 2015, p149.

that that is the example of what makes a soldier tick, is after thorough training, and under stress, that we would all do what we were required to do, and that is how that man did it.

It was just at that time, in fact just after Jack Kirby had collected ammunition, that I was very concerned that the VC [Viet Cong] had started attacking on a different front, and which was my left at that time. I did attempt to apply one of the batteries, remove one of the batteries from this regimental fire mission and apply it in that area. Jack Kirby saw it as well, and we were very worried that we were going to be done in fact from a different direction. And Jack, it didn't deter him, he just went around collecting ammunition and distributing it.²⁸

43. Lex McAulay's *The Battle of Long Tan*, written in 1986, refers to the rescue of the wounded 12 Platoon soldier, Private Harley Webb:

Jack Kirby noticed a wounded machine gunner, Webb, and ran up to the exposed position, picked up the tall soldier, and carried him back to the aid-post. The M60 could not be retrieved and had to be put out of action by rifle fire. Webb had only joined the company a few days earlier, as a reinforcement.²⁹

44. In Lieutenant Colonel Smith's recent book, Mrs Harley Webb wrote:

Not only did Jack Kirby save Harley's life in the heat of battle, carrying him back to a safer position when he was wounded, but Harley said on more than one occasion he came to resupply him with ammunition and verbal support during the battle. A very brave and caring man.³⁰

45. McAulay's book also gives an account (which is not attributed) of Kirby's one-man attack on the Viet Cong heavy machine gun position,³¹ as does Grandin,³² and Caulfield.³³ Burstall says that among other things, Kirby was 'given credit for wiping out several machinegun nests, which, judging from many people's recollections he probably did do, but not at the same time, as was reported.'³⁴

46. Lieutenant Colonel Smith also submitted to the Tribunal an account from Mr Peter Slack-Smith, of 9 Section, 12 Platoon, which described his observations of WO2 Kirby in both motivating his men, and the retrieval of Private Webb. Mr Slack-Smith's account of the rescue of Private Webb is particularly detailed:

²⁸ Documentary, *Long Tan, The Survivors Account*, Interview between Major Morrie Stanley MBE (Retd) and Dr Bruce Horsfield, 1992.

²⁹ Lex McAulay, *The Battle of Long Tan*, Century Hutchison Australia, 1986, p 95.

³⁰ Harry Smith, *Long Tan, The Start of a Lifelong Battle*, Big Sky Publishing, Newport, 2015, p150.

³¹ McAulay, *The Battle of Long Tan*, p100.

³² Grandin, *The Battle of Long Tan*, p198.

³³ Caulfield, *The Vietnam Years*, p299.

³⁴ Burstall, *The Soldiers Story*, p147

Harley was about 7 or 8 metres to my left front...My attention was captured by Jack rising up and running towards 9 Section. Alarmed at what might be his motive for such a rash move was, I moved slightly forward for a better view of what had attracted him. Nothing was obvious as we were all covered in red mud, all in prone positions. When he got to and began lifting Harley Webb the situation became clear. He was very seriously wounded. Harley was a big fellow. Private Terry Burstall, immediately behind me and probably the first to work out what Jack was up to, raised himself on all fours making a move to assist but was shouted back into position by Jack. Jack's second touch of Harley was to lift him and sling him over his shoulder in one move before making off at a stumbling run to the central aid post. How he got there I can only credit the angels. Comprehension of the selfless gallantry displayed in this act can only be appreciated within the context of it occurring within the immense volume of incoming fire. It involved two 30 metre trips at a time when all rational prudence and respect for one's life dictated that no body part be raised. Fire from a great many light infantry weapons was coming across and through our company position in what I would describe as sheets. At least one medium or heavy machine gun was raking the Section position with long bursts on a perfect fall of shot. I watched this event, mesmerised, in virtually its entirety. I expected Jack to fall at every step.

I consider my opportunity to witness this single act perhaps the greatest privilege of a lifetime. I do not believe that braver, more selfless acts or a stronger sense of duty exist. There is no higher plane. Jack qualified for a VC on both applicable accounts.³⁵

47. Lieutenant Colonel Smith also submitted a statutory declaration from Mr Webb, which described how WO2 Kirby gave him words of encouragement on the battlefield, gave him much-needed ammunition, and how he rescued him:

During the battle we regrouped around D Coy Headquarters whilst under heavy fire. I was in an exposed position on the perimeter behind a rubber tree with my backpack for cover. WO2 Kirby appeared beside me and laid down. He asked me how I was going and gave me some words for encouragement. "It is a bit rough on your first day to have a shit fight like this." He then asked me how much ammo I had left. I replied, "Very little". He said "Hang in there mate, we'll be right; we'll be out of this shortly" and then he left.

Next time I saw WO2 Kirby was when ammunition was being dropped from above the rubber trees. He had broken open a box of ammunition. He came over with ammunition for my Armilite (sic). He said "There you go mate, fill her up and enjoy". Then he left.

I was wounded shortly after being resupplied with ammunition. After I was wounded Jack Kirby came back and picked me up, chucked me over his

³⁵ Email, Mr Peter Slack-Smith, 23 November 2015.

shoulder and ran back to the medivac area. He said “here’s another one for you guys” and he left. I never saw Jack Kirby again.

For a man to move around under heavy fire without showing any sign of fear was inspirational. He saved my life.³⁶

The Defence submission

48. In reviewing Lieutenant Colonel Smith’s submissions to the Valour Inquiry, Army applied the guidelines adopted by the Tribunal in the course of that Inquiry. Army undertook a process review of each case to determine whether due process had been followed according to the rules at the time, that there was no evidence of maladministration and that there was no new or compelling evidence provided.

49. In its written submission to the Tribunal, Army stated that it determined that further investigation and research into any of the 13 cases under review by the Tribunal ‘was not warranted as Lieutenant Colonel Smith’s submissions did not present any authoritative evidence of maladministration or failure in due process’. Its written submission further stated that ‘there were no grounds for further review as there was no new or compelling evidence provided by Lieutenant Colonel Smith to warrant reconsideration of the original decisions’.³⁷

50. Representatives from Army reiterated this position at hearing.

Tribunal consideration - The Merits Review

51. The Defence position on this application, that, in the absence of maladministration or compelling new evidence, there should be no consideration of retrospective awards for gallantry or distinguished service, is a firm policy position. The Tribunal could give no weight to the position of Defence. While this policy was endorsed by Government in 2013,³⁸ it has never been supported by an enactment. In undertaking a review of a reviewable decision under Section 110VB of the Defence Act, the Tribunal is bound to undertake a merits review against the eligibility criteria for the honour sought. Those criteria do not reflect the policy position of Defence, and there is no impediment in those criteria to a retrospective award. While the applicant has made a number of claims regarding maladministration in the processing of award recommendations arising out of the Battle of Long Tan, the Tribunal has focused on the merits of the claim for the honour sought and has determined that it is not necessary to establish maladministration as a pre-requisite to such a merits review, which includes taking into account new evidence.

³⁶ Statutory Declaration, Mr Harley Webb, 20 February 2012.

³⁷ Letter, Director General Personnel – Army, DGPERs-A/OUT/2015/R22743941 dated 4 August 2015

³⁸ This ‘policy’ would appear to have been taken from the Defence Honours and Awards Appeals Tribunal’s Report of the *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour*. While Government accepted the Tribunal’s recommendations contained within that report, there was not a recommendation which specifically dealt with undertaking a process review first and then only proceeding to a merits review if there was new or compelling evidence or evidence of maladministration.

52. In undertaking its merits review of Kirby's actions, the Tribunal took into account all of the evidence submitted to it by Lieutenant Colonel Smith and gathered through its own research.

53. As noted above, the Tribunal confirmed with Lieutenant Colonel Smith at hearing that there was nothing in the contemporary citation that he would have changed, if given the opportunity to recommend WO2 Kirby for the VC.

54. The Tribunal then examined each element of the citation, together with the corresponding additional material obtained through submissions and its own research, in order to assess WO2 Kirby's performance against the eligibility criteria for the VC, which, among other things state:

*the decoration shall only be awarded for the most conspicuous gallantry, or a daring or per-eminent act of valour or self-sacrifice or extreme devotion to duty in the presence of the enemy.*³⁹

55. The first part of the citation states:

*Warrant Officer KIRBY showed outstanding bravery throughout the three hours of the battle, during which time the Company was being swept with machine gun and small arms fire, and subjected to continuous attacks by superior Viet Cong forces.*⁴⁰

56. After undertaking a detailed review of the battle the Tribunal determined from the evidence that, whilst it is accurate that D Company as a whole was continuously under fire, as described in the citation, the effects of that fire was felt differently at different locations and at different times. A close review of the battle indicates that, for a considerable period of the battle, Company Headquarters (CHQ), where WO2 Kirby was located, was not in actual contact with the enemy.

57. From approximately 1830 hours until approximately 1855 hours, however, the consolidated D Company, including CHQ, came under heavy attack. There is considerable supporting evidence that WO2 Kirby exhibited bravery, leadership and energy in moving around the CHQ position providing encouragement to the junior soldiers during that time.

58. The second part of the citation states:

In an area where virtually any movement resulted in a hail of fire from the enemy, he continually moved around the company and platoon areas, distributing ammunition and organising the collection of the wounded and their movement to the Company Aid Post.

³⁹ CAG No. S25 – Victoria Cross Regulations – dated 4 February 1991

⁴⁰ Form AF-W3121 – J W Kirby, NAA: A1944, 133/3/26.

At times he went outside the perimeter to assist the evacuation of the wounded from the forward platoons.⁴¹

59. The records show that the helicopter ammunition resupply occurred at approximately 1800 hours. It was immediately after this resupply that the company consolidated into its final defensive locality. The reception of the helicopter drop and the organisation of the ammunition distribution was organised and controlled by WO2 Kirby. At this time the radio logs indicate that there was a short lull in the battle, as the returning 11 and 12 Platoons had broken contact with the enemy. This lull in the battle was confirmed by Lieutenant Colonel Smith in his oral submission.⁴² The process of the ammunition redistribution followed the normal infantry operating procedures, namely that CHQ broke down the ammunition into platoon lots and the respective platoon sergeants, or their representatives, collected their share and distributed this to their respective platoon.

60. Prior to the company consolidating at approximately 1815, all casualties in D Company were suffered either by 11 Platoon in the forward position, or by 10 and 12 Platoon in attempting to reach 11 Platoon. It was confirmed by various oral submissions at the hearing that at no time was anyone able to reach 11 Platoon while it was isolated in the forward contact area. All the wounded from the platoons, while those platoons were isolated, were recovered to CHQ by platoon soldiers as the platoons returned to that location. Clearly WO2 Kirby played a major role in the receipt of these casualties into CHQ and their movement to the company aid post, however the evidence indicates that there was no contact with the enemy at this time. From all this available evidence the Tribunal concluded that WO2 Kirby did not leave the company headquarters position during the first two and a half hours of the battle.

61. The situation at CHQ changed after approximately 1830 when the consolidated company was heavily assaulted from the east. During this assault there were a number of casualties in the company. The evidence indicates that these were caused by enemy fire either from the assaulting troops or from flanking fire support from machine guns, possibly on Nui Dat 2.

62. Private Webb was sited on the company forward perimeter to the north west of the consolidated D Company position during these final attacks on the company. This was the opposite side of the position from where the main assault, which fell on 10 Platoon, was occurring. Private Webb was shot through the chest, presumably by the covering fire that was being delivered from Viet Cong machine guns located on the Nui Dat 2 feature some 500 metres to his North East. There is considerable evidence that WO2 Kirby rushed from CHQ and retrieved the wounded Private Webb, carrying him back to the company aid post. In his account, Private Burstall describes bursts of tracer fire being delivered into the position from this flank. Although there was no evidence presented as to exactly how Private Webb was hit, it would appear unlikely the Viet Cong machine gunners on Nui Dat 2 were able to clearly observe individual soldiers, or

⁴¹ Ibid

⁴² Oral submission, Lieutenant Colonel Harry Smith SG MC (Retd), 1 March 2016.

their movement, in this instance. The Tribunal concluded that, rather they were delivering general covering fire support to the attack from the east.

63. The Tribunal noted that there were a number of other D Company soldiers who were also killed or wounded and carried back to the company aid post during this same part of the action by other D Company soldiers. Most of these actions were not recognised in recommendations for awards, although two cases are currently before the Tribunal for consideration. The Tribunal considered that the action of WO2 Kirby, in recovering the wounded Private Webb, is accurately described in the Citation.

64. The third part of the citation states:

*At one stage he personally destroyed a heavy machine gun post being set up 50 metres from the perimeter.*⁴³

65. Lieutenant Colonel Smith indicated in his oral submission to the Hearing that in his rush to complete the citations in a very short time frame, he was unable to fully verify every incident that had been reported to him. Because of his role of commanding the battle, he was unable to see many of WO2 Kirby's actions and therefore he necessarily relied on reports from others who had witnessed events.

66. Lieutenant Colonel Smith submitted that he personally saw WO2 Kirby being very active in redistributing ammunition and providing encouragement to junior soldiers. He also submitted that, after the battle, he was swamped with reports of the positive actions of WO2 Kirby and that he had a report that Kirby 'was everywhere, even destroying a machine gun'. Lieutenant Colonel Smith stated that, despite a recent call to all the D Company surviving veterans to establish who had witnessed this incident, he was unable to find any actual witness to the event he had written in the citation. It is noted that a number of secondary sources have referred to this alleged action, but their source appears to be the DCM citation.

67. As mentioned earlier, the FO, Captain Morrie Stanley, recalled a discussion that he held with WO2 Kirby, which resulted in his redirecting the fire of 161 battery, which had been falling with the rest of the Regiment to the east of the defensive position, onto Nui Dat 2, some 500 metres to the north east. The artillery logs indicate that this switch occurred at 1840 hours. The call for fire has the log book description 'under heavy machine gun fire'. This action is consistent with Stanley's belief that machine gun fire was hitting D Company from that location. The Tribunal considers that it would therefore seem entirely probable that WO2 Kirby, having just recovered the wounded Private Webb to the Aid Post, drew the FO's attention to this threat. WO Kirby realised that the FO was the one person who could take decisive action against this machine fire. The artillery log indicates that this initiative by WO2 Kirby resulted in some 270 rounds of artillery fire engaging the Nui Dat 2 target area over the next 15 minutes.

⁴³ Form AF-W3121 – J W Kirby, NAA: A1944, 133/3/26.

68. The Tribunal considered that it is possible that after the discussion with the FO, WO2 Kirby may have then indicated to various soldiers in the rear areas, to whom he was giving positive encouragement on his rounds, that he had ‘silenced’ the machine gun that had been engaging them from the north-east. These soldiers later passed on the story that WO2 Kirby had destroyed the machine gun - that was the version of events relayed to Lieutenant Colonel Smith - and found its way into the citation. The Tribunal considers it most likely that Kirby’s actions in drawing the FO’s attention to this target displayed his tactical grasp of the situation and had the desired outcome on the machine gun(s) that was engaging D Company from the north east. This action may have saved many D Company soldiers from becoming casualties. The Tribunal therefore considers that the balance of evidence suggests that WO2 Kirby destroyed the machine gun, probably by his initiative in arranging the artillery fire, and that the wording of the citation in regard to Kirby’s actions in this regard is correct. However, no evidence could be found that the machine gun was being set up only 50 metres from the perimeter as described in the citation. The Tribunal considered this to be unlikely, given the fields of view and fire afforded to the company that was sited in all-round defence.

69. The fourth element of the citation states:

*He organised the resupply of ammunition by helicopters and continued with the distribution of ammunition and movement of the wounded until the Company was relieved. Then, when most of the Company could relax, he continued working at full pressure for another five hours, organising and supervising the loading and evacuation of the casualties.*⁴⁴

70. All evidence before the Tribunal indicates that WO2 Kirby very ably organised the resupply of ammunition to the platoons from CHQ. He also supervised and assisted in the movement of wounded from the returning platoons in an exemplary manner until the company was relieved. During the final battle, as discussed earlier, he personally assisted in the movement of Private Webb to the Company Aid Post. He also organised and supervised the loading and evacuation of the casualties after the battle. His actions were outstanding. The Tribunal found that this aspect of the citation was fully supported by all the available evidence.

71. The fifth and final element of the citation states:

*His gallant performance, without any thought for his own safety inspired and assisted D Company to defeat an enemy force much larger than the company.*⁴⁵

The Tribunal concurs with this statement.

⁴⁴ Ibid

⁴⁵ Ibid

72. WO2 Kirby was physically located at the CHQ defended locality during the whole battle. However, unlike others who were deployed on the perimeter, who had a specific arc of fire to defend and, for the most part, remained fixed to one location, his role required him to move around the position. As such, he undertook many tasks that Major Smith was unable to do as he was fully engaged fighting the wider battle by responding and initiating the radio communications both down to his Platoon Commanders and upwards to Battalion Headquarters.

73. It is clear that WO2 Kirby was the one person who everyone in or near CHQ regarded as performing above and beyond the call of duty. One reason for this was the fact that the CSM's role gave him a license to move about the position, checking on defense positions and providing encouragement to the young soldiers, who could hear the loud explosions of the artillery and the heavy rifle and machine gun fire. Nearly everyone was in their first large-scale contact with the enemy and it is clear Kirby's actions did much to instill confidence. For many soldiers at CHQ, WO2 Kirby was the only leader that they actually saw.

74. Lieutenant Colonel Smith gave evidence at the Hearing that he did not actually witness WO2 Kirby's actions when out of eyesight of his own battle position - where he was fully occupied commanding the battle. He necessarily relied on reports from other soldiers. The Tribunal accepts that in the unreasonable haste placed upon Smith to write the citations, he could only take reports as received, unable to fully verify them. The report of the machine gun that was allegedly destroyed is one example of this.

75. In the recovery of Private Webb, WO2 Kirby showed courage and decisiveness. However, the Tribunal noted that the location of this recovery was not in the forward platoon where the main assault was occurring, but rather where the incoming fire was in all probability more indirect than observed. Several other casualties throughout the Company also occurred in this final firefight and these men were also recovered, some from forward positions. As such, this particular action by WO2 Kirby was not unique in the overall actions of the D Company soldiers, and in the Tribunal's view, did not meet the exclusive criteria for the VC.

76. However, this brave action by WO2 Kirby clearly deserved recognition, as it has been through the award of the DCM – a very prestigious award, second only to the VC, in the Imperial Honours system, for non-commissioned officers, men and equivalent ranks.

77. Much of Lieutenant Colonel Smith's later reasoning for the award of a VC in his submissions is a general concern about relativity of the severity of the D Company battle as distinct from other battles that occurred in Vietnam. Whilst this may be correct in itself, it is not a factor that can be given any weight by the Tribunal in consideration of an individual gallantry award for WO2 Kirby. However, the Tribunal noted that D Company is the only Australian unit from the Vietnam War to receive the US Presidential Unit Citation and then later, both Vietnamese and Australian Unit Citations for gallantry.

78. Lieutenant Colonel Smith also submitted that WO2 Kirby's actions were comparable with those of Trooper Mark Donaldson VC. The Tribunal was mindful however, that no two situations are the same and that recommendations for a VC are always considered carefully, on a case by case basis, and that other actions are not a binding precedent with respect to eligibility for the VC. For this reason, the Tribunal decided that this part of Lieutenant Colonel Smith's submission was not sustainable.

79. **Findings.** The Tribunal finds that WO2 Kirby made an outstanding contribution to the successful actions of D Company on the 18 August 1966. He was particularly active in moving about the position, encouraging the inexperienced soldiers and building morale. He also made a substantial contribution by organising the ammunition redistribution and in assisting and directing casualties to the Aid Post, and he personally recovered Private Webb to the Aid Post. While the Tribunal could not find any further evidence to corroborate the report in the citation that WO2 Kirby personally destroyed an enemy machine gun position, it accepted it as being accurate on this point, having regard to his initiative in bringing the machine gun fire from the north east to the timely attention of the FO, and took that action into account in reaching its conclusion.

80. The Tribunal accepts that the award of the DCM was the appropriate award to recognise WO2 Kirby's distinguished conduct and leadership in the field during the Battle of Long Tan on 18 August 1966.

TRIBUNAL DECISION

81. The Tribunal decided to recommend to the Minister that the decision of the Chief of Army to refuse to recommend Warrant Officer Class 2 John William Kirby for the Victoria Cross for Australia be affirmed.

Attachments:

- A. A description of the Battle of Long Tan
- B. Previous reviews and awards resulting from those reviews
- C. Details of the conduct of the review
- D. Bibliography of the material examined by the Tribunal

Description of the Battle of Long Tan

The following description of the Battle of Long Tan has been developed by the Defence Honours and Awards Appeals Tribunal from a range of sources, including the official history, operation and artillery logs and the Tribunal's own research. A bibliography is provided at **Attachment D**. The purpose of this attachment is to provide a general background of the battle and to give context to the actions of the 13 individuals under review by the Tribunal.

1. On 18 August 1966, Delta Company (D Company), 6th Battalion, the Royal Australian Regiment (6 RAR) was engaged in one of Australia's heaviest actions of the Vietnam War. The soldiers of D Company, with a New Zealand Artillery Forward Observer team (FO) attached in direct support, held off a large enemy force, which appeared determined to annihilate them. The battle lasted for over three hours in a rubber plantation near the village of Long Tan. Much of the battle occurred during a tropical downpour. The battle site was approximately five kilometres east of the 1st Australian Task Force (1ATF) base but within range of artillery firing from that base.

2. D Company was greatly assisted in its defence by heavy concentrations of close artillery fire provided by two Australian and one New Zealand field batteries as well as a United States medium battery in the 1ATF Base. Excellent Australian communications also enabled an ammunition resupply by Royal Australian Air Force (RAAF) helicopters, arriving not long before the final Viet Cong (VC) assault on the company. The arrival of a troop of Armoured Personnel Carriers (APCs), together with infantry reinforcements from other elements of the battalion, just on dusk, was the final step in causing the enemy to break off the engagement. However it was D Company that bore the brunt of the battle.

3. D Company was one of four rifle companies of 6 RAR. Together with 5 RAR, New Zealand elements and supporting artillery, engineers, signals, intelligence and logistic units, they made up 1ATF. The 1ATF had deployed to a newly established base near Nui Dat, in the centre of Phouc Tuy Province, South Vietnam in June 1966. Their mission was to take control of security in the Province. The Australians based their plans on their lengthy experience in counter revolutionary warfare gained in Malaya and Borneo. Phouc Tuy Province had previously been the responsibility of the Army of the Republic of Vietnam (ARVN). The ARVN units had been forced back to the major towns, leaving the VC largely in control of the smaller villages and much of the surrounding countryside.

4. In the lead up to the Long Tan battle in August 1966, the Task Force had busied itself preparing the base defences and patrolling; establishing control over the area in the immediate surrounds of the base. There were a number of contacts with the enemy, however, prior to 18 August 1966, all contacts were of small scale and the enemy was identified as either local force VC, who were lightly armed, often with old or obsolete weapons, or elements of the D445 Provincial Battalion. Neither force was uniformed, nor did they have indirect fire weapons.

5. During the early hours of 18 August, the 1ATF base was mortared and shelled by indirect mortar, artillery and recoilless rifle fire, resulting in 22 casualties. The probable enemy firing points were identified by compass bearings taken from locations within the base and these positions immediately engaged by artillery counter battery fire. The VC firing positions were to the east of the 1ATF Base and on the western edge of a rubber plantation.

6. Soon after first light, B Company, 6 RAR, was sent to search for these firing positions. B Company found evidence of the positions, together with signs of casualties presumably resulting from the counter battery fire, and identified tracks heading east away from the firing positions. D Company was then deployed on foot from the base to relieve B Company and ordered to follow up this track. D Company deployed, just as they had done in previous patrols, with only 60 rounds of ammunition per rifleman in their ammunition pouches and 600 rounds per machine gun. They took sufficient rations for a three day patrol.

7. Over the previous weeks, signals and other intelligence had identified the probable deployment of a main force VC Regiment to the east of the base, but patrolling had not been able to locate any tangible signs of its presence. In order to protect the source of this intelligence, 1ATF Commander, Brigadier Jackson, had not warned 6 RAR of this possibility, however he had directed that no patrol was to proceed beyond the range of artillery deployed within the base. The use of indirect fire by the enemy in the early hours of 18 August should have confirmed this intelligence and provided a warning of the potential presence of a better armed and trained force that was superior to the D445 Battalion.

8. After a handover from B Company, D Company entered the rubber plantation and advanced to the east following the track used by the withdrawing enemy. The plantation was relatively open, providing good observation and fields of fire between the rows of trees.

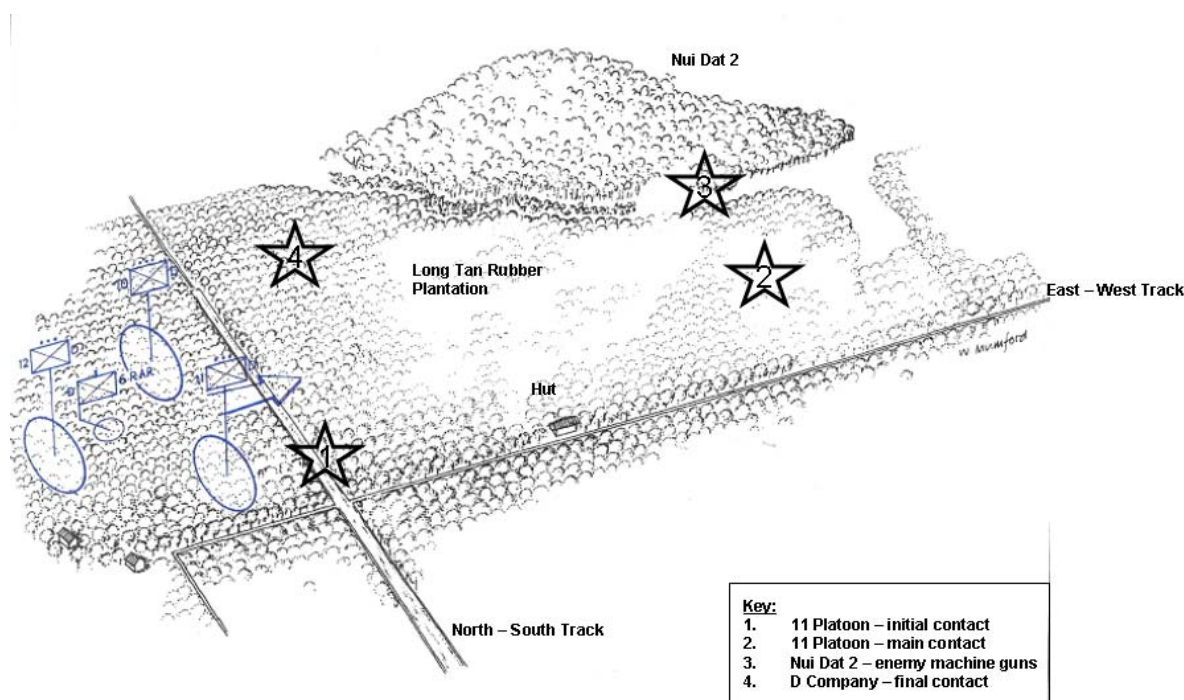
9. D Company was comprised of three rifle platoons (each of approximately 30 soldiers) commanded by a company headquarters element (CHQ). CHQ contained the command group, signallers, a medical orderly and the attached FO party. CHQ was protected by an infantry support section. Each rifle platoon carried three belt-fed machine guns (GPMG M60), and the support section held one, making a total of ten machine guns in the company.

10. Soon after entering the rubber plantation it was observed that the track split and Major Smith, the Officer Commanding D Company, changed his patrolling formation to 'two up'. That is, the company advanced into the rubber plantation with two platoons abreast, 10 Platoon on the left and 11 Platoon on the right, followed by CHQ and the reserve platoon (12 Platoon), see Map (below). The company frontage was estimated to be around 400 metres.

11. At 1540 hours, 11 Platoon (on the right) were in the process of crossing the north-south track that traversed the rubber plantation, when they encountered a small enemy patrol of six or seven uniformed soldiers moving north along the track. 11 Platoon engaged the enemy, wounding one VC. The enemy fled east, carrying their wounded comrade. They did not return fire but dropped an AK47 assault rifle in their

hasty retreat. This weapon and the identification of enemy in uniforms should have alerted D Company to the presence of regular main force VC troops, rather than the irregular VC previously encountered.

12. Following this brief encounter, the commander of 11 Platoon, Second Lieutenant Sharp, received approval from Major Smith to quickly follow up the enemy who had fled. Second Lieutenant Sharp changed the formation of 11 Platoon to 'extended line' in order to provide the maximum possible frontage towards the expected enemy. His three sections were deployed across a frontage of approximately 300 metres, with 6 Section on the left, 4 Section and Platoon Headquarters in the centre and 5 Section on the right. Each section was approximately 9 soldiers strong. After a fast 250 metres advance they passed a hut (found to be unoccupied) and then, at 1608 hours, having advancing a further 250 metres, they were engaged from their left flank by small arms and machine gun fire. This heavy fire was from a distance of approximately 150 metres (see Map) from the higher ground on the forward slopes of the Nui Dat 2 feature.



Map: 1515 hours 18 August, D Company patrol enters Long Tan rubber plantation¹

13. This sudden burst of accurate fire devastated 6 Section, catching it from a flank, whilst they were upright and moving, causing significant casualties. Only two members of 6 Section (one of whom was badly wounded and unable to be evacuated) ultimately survived the battle. Second Lieutenant Sharp reacted by calling for immediate artillery support and by deploying the uncommitted 5 Section to move across his front to bring fire onto the enemy. Shortly afterwards the enemy sent forward an attack wave from the east forcing 5 Section to fall back and go to ground; and for the remnants of 11 Platoon to form an all-round defensive position. This initial

¹ Adapted from Ian McNeill, *To Long Tan, The Official History of the Australian Army and the Vietnam War 1950-1966*, Allen & Unwin, St Leonards, 1993, Sketch 14.1, p 326.

enemy frontal attack wave was beaten back by accurate and well-controlled fire of 11 Platoon, using their semi-automatic rifles and machine guns. At around this time rain began to fall, and soon after became monsoonal.

14. At approximately 1650 hours, Second Lieutenant Sharp was killed whilst exposing himself in an attempt to determine the fall of shot of the artillery fire that was now assisting the defence. His platoon sergeant, Sergeant Buick, then took command of 11 Platoon. He organised the defences, controlled the artillery fire support, communicated with Major Smith and eventually directed a withdrawal.

15. After taking heavy casualties in frontal attacks from the east, the enemy appeared to have realised that they could not defeat 11 Platoon with attacks from that direction and commenced a number of attempts to outflank them. However, 11 Platoon was so determined in their defence that their defensive position was never penetrated, despite themselves taking very heavy casualties. Even after the withdrawal, the enemy never ventured into the position that had been occupied by 11 Platoon, as two wounded soldiers, unable to be rescued during the withdrawal, remained untouched until the relief the next morning.

16. Meanwhile, as a result of enemy mortar fire directed near the initial 11 Platoon contact location on the north-south track, CHQ and 12 Platoon moved northwest some 300 metres and set up a temporary defensive position. The probable mortar firing position was engaged with counter battery fire from the US medium battery. 10 Platoon was, by this time, further east but still some 2-300 metres northwest of the 11 Platoon contact location. Major Smith directed Lieutenant Kendall, the commander of 10 Platoon, to move his platoon in an attempt to support 11 Platoon, now in heavy contact.

17. As they advanced towards the sounds of the contact, 10 Platoon fortuitously observed and then engaged a large enemy force that were then attempting to outflank and assault 11 Platoon from the north. Ten Platoon were able to break up this assault wave, inflicting heavy casualties upon the enemy. Ten Platoon now themselves came under heavy fire, and took a number of casualties. They were unable to link with 11 Platoon. Major Smith then recalled 10 Platoon to re-join CHQ in the rear defensive position.

18. Realising that his company was under severe threat from an unexpectedly aggressive, determined and well-armed enemy, Major Smith requested air support, a resupply of ammunition and reinforcements using his radio communications.

19. The airstrike was initially called at 1702 hours and the aircraft appeared overhead in location at 1715 hours. For aircraft safety the artillery fire, falling in support of 11 Platoon, was halted to allow for this planned airstrike. By this time the rain was very heavy and the airstrike had to be abandoned as the aircraft were unable to see the coloured smoke thrown by 11 Platoon in order to identify the target location. The aircraft subsequently dropped their bomb-load further east of the contact site.

20. Major Smith then directed Lieutenant Sabben to take two sections of his uncommitted 12 Platoon to attempt to relieve 11 Platoon using a more southerly route than that previously taken by 10 Platoon. At 1730 hours, 12 Platoon reported that they were still 400 metres from 11 Platoon and they were coming under fire both from the

north and south as well as receiving 'overs' from fire directed at 11 Platoon from the east. Artillery fire was then recommenced with the field regiment having its fire directed to the south of 12 Platoon.

21. At 1800 hours, the helicopter ammunition resupply arrived at CHQ and the ammunition distributed to 10 Platoon who had fought heavily during their attempted advance to 11 Platoon. The artillery fire was again halted for air safety. It was at this moment that Sgt Buick made the decision that, as 11 Platoon was now almost completely out of ammunition, that the only solution for the survival of the remainder of his platoon was to attempt a clean break and to make a withdrawal. Of significance was that no member of D Company had been able to reach 11 Platoon for the two hours that the battle had been raging.

22. The order to withdraw was passed by word of mouth and the surviving soldiers rushed to their rear in small scattered groups. They were initially unaware that the 12 Platoon patrol was just a few hundred metres to their rear. Lieutenant Sabben had by this time realised that he could not reach 11 Platoon, and noting that smoke had been thrown for the ammunition resupply, decided to throw smoke himself in the hope 11 Platoon would see it. Some, including Sergeant Buick moved to the smoke they could see at 12 Platoon. Some, from the right section, moved directly to the smoke observed further back at CHQ, where the helicopter resupply was occurring.

23. At approximately 1815 hours, 12 Platoon, with the remnants of 11 Platoon, consolidated with the remainder of the company. Temporarily a short lull descended on D Company as contact with the enemy was broken. This enabled the reorganisation of the company defensive locality and the distribution of ammunition, under the direction of the Company Sergeant Major, Warrant Officer Kirby. The returning wounded from 11 and 12 Platoons were moved to the company aid post, under the care of the company medical orderly.

24. At 1820 hours, Major Smith reported on the battalion radio net that the 'enemy could be reorganising to attack'. At the same time, B Company elements, who had been directed to join and reinforce D Company by foot, reported that they were now 500 metres southwest of D Company.

25. Back at the 1 ATF base, at approximately 1800 hours, Brigadier Jackson, in response to the earlier request for reinforcements, authorised a relief force comprising A Company, 6 RAR mounted in the APCs of 3 Troop, 1 APC Squadron, to proceed to relieve D Company. The force had a difficult passage to reach D Company, needing to 'swim' a flooded stream and to advance though terrain that could afford concealment to an enemy who may well have been planning to ambush them. To reach D Company as rapidly as possible, Lieutenant Roberts, the commander of 3 APC Troop, had split his force, one element to proceed as quickly as possible to relieve D Company and the other to await the collection of the Commanding Officer of 6RAR, Lieutenant Colonel Townsend (CO 6 RAR) to facilitate his passage to the battle location.

26. At 1830 hours, the main group of 3 APC Troop, carrying A Company, entered the rubber plantation from the south, approximately 1500 metres from D Company. Lieutenant Roberts deployed his APC in extended line astride the north-south track, for the advance north to D Company. At 1835 hours, this force struck a significant enemy

group crossing their path from the east. Initially fearing that it could be friendly forces, and fearful that heavy 50 calibre machine gun fire would be directed towards D Company, the troop halted. At this moment an infantry Sergeant recognised the enemy and promptly initiated contact with his rifle. The enemy were then scattered by the combined fire of APCs and infantry weapons. This enemy group were later identified as elements of the Regional Force Unit, D445.

27. At 1840 hours, after the advance was resumed, 3 APC Troop met another enemy force, this time moving west to east. Forewarned from the earlier contact the enemy utilised an anti-tank weapon which fortunately missed its target. However an APC commander was mortally wounded before the enemy was again scattered and the advance resumed. The APC carrying the wounded APC commander returned to the 1ATF Base.

28. Shortly afterwards, the APC Troop was joined by the other APC element carrying the CO 6 RAR, who had arrived without incident. The APC troop quickly covered the remaining distance to D Company without further contact with the enemy.

29. At the D Company location, the enemy had moved quickly and aggressively to undertake what was later described by Lieutenant Kendall as 'human wave' assaults. These assaults from the east, starting at approximately 1830 hours, fell mainly upon 10 Platoon, which had been sited on that part of the company perimeter. The enemy attack was supported by machine guns firing from the Nui Dat 2 feature. D Company exacted a heavy toll on the enemy, as they advanced in relatively open terrain. D Company had the advantage of being low to the ground and with their machine guns well sited and the fire closely coordinated. Additionally, the artillery fire from the regiment of three field batteries, which commenced at 1834 hours, was able to be brought in very close to the D Company defensive locality. This was achieved as the direction of fire was almost overhead and the splinter pattern of the numerous shell bursts went forward from the point of detonation.

30. From 1840 hours, the New Zealand field battery was lifted from falling just to the east of D Company, with the remainder of the regiment, and directed onto the slopes of Nui Dat 2. This action was described in the artillery radio log as being an attempt to silence the flanking fire from enemy machine guns. The United States medium battery was directed at a possible mortar location further to the south east of D Company. The rate of fire from the eighteen 105mm field howitzers at this period (from 1834 until 1855 hours) was probably the most intense rate ever fired by artillery in support of Australian forces during the Vietnam War, with 1,350 rounds being fired at the VC positions in just this twenty minute period.

31. As the APCs swept in from the south, the artillery fire was halted and the enemy were observed rushing away to the east. They had broken off their already faltering attack and, as darkness fell, no further sign of the enemy was seen. The combined force was deployed in all-round defence and reorganised by Lieutenant Colonel Townsend. Later that night the casualties were evacuated. Of major concern was that the roll-call taken by 11 Platoon had disclosed that 16 men were missing in action. The next morning a battlefield sweep was conducted and two wounded soldiers from 11 Platoon were recovered along with the bodies of 14 men who had died in that forward location.

32. At or near Long Tan on 18 August 1966, a total of 17 Australians had been killed and 24 wounded, with one of the wounded dying several days later. Earlier, during the indirect fire attack on the 1ATF Base, a further 22 Australians had been wounded.

33. Later investigations indicated that the enemy engaged was the regular, well trained and equipped 274 VC Regiment, supported by the local D445 Battalion. Casualties to the Vietnamese forces were very high, with estimates, based on both body count and captured documents, being well in excess of 150 killed in action, perhaps many more, as the enemy made every possible effort to recover their dead and wounded.

34. There has been much conjecture as to the intent of the 274 VC Regiment on 18 August 1966, when it approached the newly established 1ATF Base. Was it intending to test out the Australians? Was it intending to attack the 1ATF Base; or was it attempting to lure an Australian force out of the base and destroy it in an ambush?

35. Certainly one outcome was that the enemy never again conducted large scale operations within artillery range of the 1 ATF Base. No Australian base in Phuoc Tuy Province was ever subjected to an enemy ground assault intended to overrun it. However, Fire Support Bases (FSB) deployed outside Phuoc Tuy Province, such as FSB Coral, FSB Balmoral and FSB Anderson were assaulted. It may be that one of the reasons for this was that the enemy units in these later cases were not as aware of the potency of 1ATF defensive techniques as were the enemy operating within Phouc Tuy Province after 16 August 1966.

36. The 1ATF also learned many tactical lessons - not the least of which was the realisation that they were now in a 'real war' against a well-armed, brave and determined enemy.

Previous reviews and awards resulting from those reviews

1. In 2004, in response to representations from Lieutenant Colonel Smith, the then Minister Assisting the Minister for Defence and Minister for Veterans' Affairs, the Hon. Mal Brough MP, recommended to the Governor-General that 22 individual South Vietnamese decorations that were to be presented on 2 September 1966 should be approved for wearing. Although the requirement for a formal government-to-government offer could not be fulfilled, as the South Vietnamese government fell in 1975, the Governor-General agreed that there was sufficient evidence of an intention to offer the awards (for example the presentation of cigar boxes and dolls). However Mr Brough decided that the same process could not be applied to the claim for the Vietnamese Unit Citation.¹

2. In October 2007, the then Government appointed an independent panel to review the treatment of award recommendations stemming from the Battle of Long Tan, as well as service recognition for Royal Australian Air Force (RAAF) personnel posted to Royal Thai Air Force Base Ubon between 1965 and 1968.

3. With respect to Long Tan, the panel, chaired by retired Major General Peter Abigail AO, was directed to have regard to the Imperial gallantry awards recommended at the time of the battle as well as claims for the award of the Republic of Vietnam Cross of Gallantry with Palm Unit Citation (RVCGWPU). In 2008, the then Government made the following decisions² on receipt of the report:

- award the Star of Gallantry to Lieutenant Colonel Smith;
- award the Medal for Gallantry to Mr Sabben and Mr Kendall, platoon commanders;
- approve the RVCGWPU for wear by the strength of D Coy 6 RAR in Vietnam on 18 August 1966; and
- refer any unresolved concerns regarding the battle to the new, administratively established Defence Honours and Awards Tribunal (the old Tribunal).

4. Briefly, the Abigail Panel considered that the claims in respect of Smith, Sabben and Kendall were the subject of 'recommendations initiated by an authorised commander so that a particular award might have resulted'.³

5. As noted above, following the Government's consideration of the Abigail report, the old Tribunal was directed to inquire into and report on unresolved concerns regarding individual awards for the Battle of Long Tan. In particular, the old Tribunal

¹ Department of the Prime Minister and Cabinet, *Review of recognition for the Battle of Long Tan: March 2008*, (the Abigail Review) PM&C, Barton, 2008, p2-3

² Joint Media Release, *Medals for Long Tan Veterans*, Senator the Hon J Faulkner, the Hon A Griffin MP and the Hon Dr M Kelly MP, 14 August 2008

³ Department of the Prime Minister and Cabinet, *Review of recognition for the Battle of Long Tan: March 2008*, (the Abigail Review) PM&C, Barton, 2008, p23.

was to consider claims concerning Australian Defence Force personnel who were recommended for recognition following the Battle of Long Tan. In submissions to this Inquiry, Lieutenant Colonel Smith sought recognition for 12 individuals who fought at the Battle of Long Tan.

6. The old Tribunal considered its task was ‘to determine whether concerns regarding claims for medallic recognition of those who took part in the Battle can be supported’.⁴ As such, the Tribunal did not consider it necessary for it to direct its attention to a merits based assessment of the actions of individuals who were involved in the battle. Rather it was ‘concerned with the processes that were followed in regard to the making of awards to those involved.’⁵

7. On this basis, the old Tribunal concluded that it was unable to recommend any new or upgraded award to any individual member of D Company, 6 RAR unless there was documentary or other compelling evidence that a proper recommendation was initiated at the time. Its examination of the available evidence did not enable it to conclude that any such recommendations were made in respect of the persons whose actions were brought to the old Tribunal’s attention, except for an RAAF helicopter pilot, Flight Lieutenant Cliff Dohle. Dohle was the only individual recommended for an award by the old Tribunal, though it did recommend that D Company 6 RAR receive a Unit Citation for Gallantry for its performance at the Battle of Long Tan. These recommendations were subsequently accepted by Government.

⁴ Report of the Defence Honours and Awards Tribunal *Inquiry into unresolved recognition issues for the Battle of Long Tan*, 2009, p10

⁵ Ibid

Details of the conduct of the review

1. In 2011, Lieutenant Colonel Smith made submissions to the Tribunal's *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour* (the Valour Inquiry). These were among 174 submissions seeking recognition for 140 individuals and groups not specifically named in the Terms of Reference for that Inquiry. As set out in the Terms of Reference for that Inquiry, the Tribunal was 'to report to the Parliamentary Secretary for Defence on the detail of the additional submissions received in order for the Government to determine whether a proposal for recognition should be referred to the Tribunal for review.'¹
2. Two of Lieutenant Colonel Smith's submissions sought a Victoria Cross for the late Warrant Officer Class Two Jack Kirby and another was a resubmission of his 2009 submission to the old Tribunal's inquiry, following agreement from the former Chair that it would be included as a submission to the Valour Inquiry.
3. In February 2013, the then Chair of the Tribunal conveyed to the previous Government copies of all additional submissions for recognition together with the Tribunal's preliminary assessment of the appropriateness of the supporting documents, so that the Government could confirm what submissions should be received by the Tribunal for further consideration.
4. In March 2013, Government chose to refer the majority of the submissions (including Lieutenant Colonel Smith's) to the Chief of the Defence Force and the respective Service Chiefs for consideration.
5. In November 2014, the Chief of Army rejected Lieutenant Colonel Smith's submissions. In doing so, he relied on the findings of the old Tribunal's Inquiry and that Lieutenant Colonel Smith's submissions with respect to Kirby and the names listed in his 2009 submission contained no new compelling evidence or evidence of maladministration.
6. This advice was relayed to Lieutenant Colonel Smith by the then Parliamentary Secretary for Defence, the Hon. Darren Chester MP, on 22 December 2014. After further correspondence with the Parliamentary Secretary, Lieutenant Colonel Smith lodged his application for review in the Tribunal on 3 April 2015, and provided further material on 6, 8 and 10 April to be included in his application. That application sought review of the decisions of the Chief of Army with respect to 13 individuals who fought at the Battle of Long Tan.
7. In accordance with its *Procedural Rules 2011*, on 28 May 2015, the Tribunal wrote to the Secretary of the Department of Defence informing him of Lieutenant Colonel Smith's application for review and requesting that he provide a report. On 7 August 2015, Director General Personnel-Army, on behalf of the Secretary, provided the Tribunal with a report.

¹ Defence Honours and Awards Appeals Tribunal, Report of the *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour*, 2013, pp ix-x.

8. On 12 August 2015 this material was provided to Lieutenant Colonel Smith for comment. Lieutenant Colonel Smith's comments were received on 17 August 2015. Lieutenant Colonel Smith provided further written material to the Tribunal on 20 May, 6 July, 19, 20 and 25 August and 12 November 2015. Further material was provided on 5, 7, 19 and 28 January, 19 and 22 February, during hearings between 1 and 3 March, and on 7 March 2016.

9. On 16 November 2015, the Tribunal wrote to Lieutenant Colonel Smith advising him of tentative dates for hearings and inviting him to provide a list of witnesses to appear before the Tribunal at those hearings. Lieutenant Colonel Smith provided his list of witnesses on 5 January 2016.

10. On 18 January 2016, the Tribunal provided Lieutenant Colonel Smith with a package of the submissions and research material it intended to rely on as part of the review. Lieutenant Colonel Smith provided written comment on this material on 20 and 26 January 2016. Further research material was provided on 25 February 2016, and Lieutenant Colonel Smith provided comment on this material on the same day.

11. The Tribunal met on 10 December 2015, 17, 18, 19 and 29 February, 11 March, 13 May and 14 June 2016 when it considered the material provided by Lieutenant Colonel Smith, the Department of Defence and research material provided by the Tribunal's Secretariat.

12. The Tribunal conducted hearings on 1, 2 and 3 March 2016 when it heard oral evidence and submissions from Lieutenant Colonel Smith, representatives from the Department of Defence and other witnesses. Names of all those heard by the Tribunal include:

Lieutenant Colonel Harry Smith SG MC (Retd)
Department of Defence represented by
Colonel Chris Smith and Ms Gillian Heard
Mr Frank Alcorta OAM
Mr Bob Buick MM
Colonel Peter Dinham AM (Retd)
Mr Laurie Drinkwater
The Hon. Allan Griffin MP
Colonel Robert Hagerty AM
Mr David Harris
Mr Geoffrey Kendall MG
Lieutenant Colonel Charles Mollison (Retd)
Mr Neil Rankin
Mr David Sabben MG
Mr William Roche

14. On 17 June 2016, further evidence was obtained by way of a telephone discussion with Mr Geoffrey Kendall MG to follow up on some elements of his submission of 3 March 2016 and the citations which he had provided to Lieutenant Colonel Smith in 2008. A record of this discussion was sent to Lieutenant Colonel Smith on 17 June 2016. Lieutenant Colonel Smith provided his comments on 20 June 2016.

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AWM119 581 - *Operational awards Vietnam List 2 [Pte R W Bailey; Capt M J Carroll; Sgt J W Carnes; Pte J P Daly; Pte R S Fraser; Cpl R Evans; Cpl R H Hillier; Cpl T B Loftus; Capt A H MacGregor; Cpl G A Smith; Pte D B Vogele; Pte L Waring]*

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Submission 11 – Mr James L Bodey

Submission 12 – Mr Dave Sabben MG

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Submission 15 – Colonel Peter Dinham (Retd)

Submission 16 – Colonel Bob Hagerty (Retd)

Submission 19 – Mr Ian Savage

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Submission 27 – Colonel F. Adrian Roberts OAM (Retd)

* Permission to use these submissions for this review was obtained from the authors