



Australian Government

Defence Honours and Awards Appeals Tribunal

Smith and the Department of Defence Re: Magnussen [2016] DHAAT 21 (1 August 2016)

File Number(s) 2015/014

Re **Lieutenant Colonel Harry Smith SG (Retd)**
 on behalf of Lance Corporal Barry Eugene Magnussen (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 Lance Corporal Barry Eugene Magnussen for the Commendation for Gallantry be set aside and substituted with a new decision to recommend Lance Corporal Barry Eugene Magnussen for the Medal for Gallantry.

CATCHWORDS

DEFENCE HONOUR – *Defence honour – other acts of gallantry – in action — worthy of recognition*

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 (Retd), seeks review of a decision of the Chief of Army to refuse to recommend Lance Corporal Barry Eugene Magnussen for the Commendation for Gallantry for his service at the Battle of Long Tan (the Battle) on 18 August 1966 in Vietnam. Lance Corporal Magnussen was a member of 4 Section, 11 Platoon, D Company, 6th Battalion the Royal Australian Regiment (6 RAR) during the Battle of Long Tan.

2. Lieutenant Colonel Smith held the rank of Major during the battle, and was the Officer Commanding D Company 6 RAR. He asserts that on 22 August 1966, following earlier discussions, he presented the Battalion Commander, Lieutenant Colonel Colin Townsend (CO 6 RAR), with a number of written recommendations for awards for gallantry during the Battle, including a written recommendation for a Mention in Despatches (MID) for Lance Corporal Magnussen and for reasons that have never been satisfactorily explained, the nomination appears not to have been progressed.

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 Lance Corporal Magnussen 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 ss110VB(1) of the *Defence Act 1903* 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 Commendation for Gallantry. The Tribunal considered that the Chief of Army's refusal to recommend Lance Corporal Magnussen for the Commendation for Gallantry 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 Contemporary Gallantry Awards

14. The *Commonwealth of Australia Gazette* (CAG) No S25 dated 4 February 1991, creates the awards of the Star of Gallantry; the Medal for Gallantry; and the Commendation for Gallantry by Letters Patent, which provide recognition for members of the Defence Force and certain other persons who perform acts of gallantry in action. The conditions for these awards are referred to as the *Gallantry Decorations Regulations 1991* (the Regulations). The Regulations were amended in CAG No. S420, dated 6 November 1996.

15. The Regulations as amended, stipulate the following conditions for award of the decorations at Regulation 3:

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

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

(3) The Commendation for Gallantry may be awarded for other acts of gallantry in action which are considered worthy of recognition.¹

Lance Corporal Magnussen's Service

16. Barry Eugene Magnussen was born on 15 May 1945 in Brisbane. He enlisted for National Service on 30 June 1965 and following recruit and initial infantry training he joined 6 RAR on 8 September 1965.

17. Lance Corporal Magnussen arrived in Vietnam with 6 RAR on 8 June 1966 as second in command of 4 Section, 11 Platoon, D Company. He was discharged from the Army on 29 June 1967 after completing his period of National Service. He passed away in 2015.

¹ CAG No. S420, 6 November 1996

Lance Corporal Magnussen's actions

18. Australia's Official History of the Australian Army and the Vietnam War gives a detailed description of the Battle of Long Tan. While Lance Corporal Magnussen is not mentioned by name in the official history, he was a member of 11 Platoon that quickly found themselves isolated and in the thickest of the fighting at Long Tan.

19. Magnussen's own account of his actions in the Battle is contained in Charles Mollison's book *Long Tan and Beyond*:

I don't know how long we were at it but I then heard the loud voice of Platoon Sergeant Bob Buick yelling out, 'Every man for himself!' I looked behind me to see him running off to the left. The rest of us could not leave as we were pinned behind by enemy fire. Some time a little later, we had a better chance to return fire. Some enemy got up in front of us. Darby (Private Munro) despatched them. We could hear a whistle blow from time to time, seemed they were coming again...they were. Darby knocked them over again. Ammunition for the machine guns was getting low, about 50 rounds. I had only one magazine left for my SLR.

I looked to the right and could see Jim Houston's body with two belts of M60 ammo on him. I went for them. That 10 yards was the longest 10 yards in my life. Bullets splattered into the mud all around me, but I managed to get them. Darby had pinpointed an enemy machine gun, the one that had been firing at me. We got stuck into it; took a lot of ammunition, but we got it. Now it was really raining.²

and

I stumbled on (Private) (Custard) Meller. He was wounded so I dragged him on my shoulders and tried to crawl on. Heavy as lead. I was hurting him. He said, "Leave me. Leave me. Come back later."³

20. In Terry Burstall's book, *The Soldier's Story*, Private Meller confirms the story of being assisted by Magnussen when wounded:

About ten or twenty metres after that I got shot in the leg and went down. I took off my pack and threw my rifle away as I was out of ammunition, and then Barry Magnussen came through from behind me and tried to carry me on his back. He dragged me a fair way on his back and I said to him we weren't getting anywhere and for him to let me go. I said for him to go on ahead and I'd try and make it.⁴

² Charles Mollison, *Long Tan and Beyond, A Company 6 RAR in Vietnam*, Cobbs Crossing Publications, Woombye, 2004, p 151-152.

³ Ibid, p152.

⁴ Terry Burstall, *The Soldiers Story, The Battle at Xa Long Tan*, University of Queensland Press, St Lucia, 1986, pp84-85.

21. In his oral evidence to the old Tribunal's Inquiry in 2009⁵, Mr Buick described how Lance Corporal Magnussen assumed command of his section early in the battle, and the critical role of that section in the survival of 11 Platoon:

*Magnussen was a Lance Corporal and the 2IC of the centre section. My left hand section was virtually killed or wounded and they didn't participate very much in the battle. The section commander of that particular section came back to my headquarters and told me I had to withdraw. I told him to get back to his section. I didn't see him return and therefore considered that Magnussen held the section together...That particular section took the brunt of the battle because 20 minutes after all the bullets started flying, they attacked us from the east roundabout 80 to 100 strong. We had no artillery available or what was available wasn't dropping where we wanted it...*⁶

22. In his oral evidence to the Tribunal on 2 March 2016, Mr Buick again concentrated on Lance Corporal Magnussen's role in holding the middle section together during the platoon battle:

*When you're in close combat we have corporals who control the section between 6 and 9 – he is responsible for a certain sector and every private soldier is responsible for a personal sector within that sector. It is all controlled by a corporal who is trained in fire support and all the rest. When the corporal does not do his job and leaves that section...Barry Magnussen then took over that particular job. The enemy never penetrated and never proceeded close to us and for that I would have to give credit to Barry Magnussen. And on that basis I recommended him for an award.*⁷

Lieutenant Colonel Smith's Submission

23. Lieutenant Colonel Smith submitted to the Tribunal that on 22 August 1966, following earlier discussions, he presented CO 6 RAR with a number of written recommendations for awards for gallantry at Long Tan, including a written recommendation for a MID for Lance Corporal Magnussen. No record has been found of this or the other written recommendations

24. A citation crafted several years after the war was included in one of Lieutenant Colonel Smith's submissions to the 2009 Inquiry. It reads:

1731001 Lance Corporal Barry Eugene MAGNUSSEN, a National Serviceman with 11 Platoon D Company 6th Battalion Royal Australian Regiment demonstrated outstanding command and control during the battle in the Long Tan rubber plantation on 18 August 1966. His ability was a defining factor in

⁵ Defence Honours and Awards Tribunal's (the old Tribunal's) *Inquiry into unresolved recognition issues for the Battle of Long Tan*, 2009

⁶ Oral submission, Defence Honours and Awards Tribunal *Inquiry into unresolved recognition issues for the Battle of Long Tan*, Mr Bob Buick MM, 21 April 2009.

⁷ Oral submission, Mr Bob Buick MM, 2 March 2016.

*preventing the enemy penetrating and overrunning the platoon. His action was an inspiration to others during the battle.*⁸

The Defence Submission

25. 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.

26. In its written submission to the Tribunal, Army stated that it determined that further investigation and research into the 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.'⁹

27. Representatives from Army reiterated this position at hearing.

Tribunal Consideration – The Merits Review

28. The Tribunal noted the Defence position that, in the absence of maladministration or compelling new evidence, there should be no consideration of retrospective awards for gallantry or distinguished service. However, the Tribunal in undertaking a review of a reviewable decision under Section 110VB of the Defence Act is bound to undertake a merits review against the eligibility criteria for the honour sought.

29. The Tribunal noted that guidance for merits review is detailed in the Valour Inquiry.¹⁰ This guidance states that the Tribunal, in the conduct of a merits review, is being asked to 'place itself in the shoes of the original decision-maker' and where the original decision-maker made a conscious decision not to make an award, the Tribunal 'was being asked to overturn that decision'. The guidance suggests that:

*...if the evidence was exactly the same as that available to the original decision-maker, and if the Tribunal wished to recommend a revised award, it would need to overturn the original decision ...*¹¹

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

⁸ 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), p10

⁹ Letter, Director General Personnel – Army, DGPERS-A/OUT/2015/R22743941 dated 4 August 2015

¹⁰ Report of the Defence Honours and Awards Appeals Tribunal's *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour* 2013, p91 [8-46]

¹¹ Ibid.

*... if no decoration was recommended, and the Tribunal could be sure that there was no conscious decision not to make an award, then the Tribunal would be in the situation of the original decision-maker or recommender.*¹²

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

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

33. **Evidence Available to the Original Decision Maker.** The Applicant (Lieutenant Colonel Smith) claims that he discussed and subsequently submitted a citation nominating Lance Corporal Magnussen for the MID to CO 6 RAR on 22 August 1966. As this citation has not been found, the Applicant submitted a short citation to the 2009 Inquiry which summarises the action. The Tribunal accepts that a draft recommendation with a citation was submitted and that the 2009 citation in 1966 is a reasonable replication of the original and representative of what CO 6 RAR may have based his decision upon. The relevant phrases from the citation which could be related to Lance Corporal Magnussen’s gallantry are:

... demonstrated outstanding command and control during the battle ...

... his ability was a defining factor in preventing the enemy penetrating and overrunning the platoon...

*... his action was an inspiration to others...*¹³

34. The Tribunal noted that the criteria for the MID included recognition for ‘an act of bravery’.¹⁴ Having reviewed the citation provided by the Applicant, the Tribunal agrees that there was insufficient detail of an act of bravery to support the award of the MID at that time.

35. **Finding in Relation to the Evidence Available to the Original Decision.** The Tribunal finds that in the absence of any further evidence in 1966 it is not able to overturn the decision made by CO 6 RAR to not support Lance Corporal Magnussen’s MID nomination.

36. **New Evidence.** The Tribunal noted that the publications *Long Tan and Beyond* and *The Soldier’s Story* provide evidence of Lance Corporal Magnussen’s actions that were not available to CO 6 RAR. The significant parts include Magnussen’s recollections:

¹² Ibid

¹³ 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), p10

¹⁴ Report of the Defence Honours and Awards Appeals Tribunal’s *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour* 2013, p40 [4-28]

I looked to the right and could see Jim Houston's body with two belts of M60 ammo on him. I went for them. That 10 yards was the longest 10 yards in my life. Bullets splattered into the mud all around me, but I managed to get them.

I stumbled on (Private) (Custard) Meller. He was wounded so I dragged him on my shoulders and tried to crawl on. Heavy as lead. I was hurting him. He said, "Leave me. Leave me. Come back later".¹⁵

This account is verified in *The Soldier's Story*:

Barry Magnussen came through from behind me and tried to carry me on his back. He dragged me a fair way on his back and I said to him we weren't getting anywhere and for him to let me go.¹⁶

37. The Tribunal also noted that the oral evidence from Sergeant Buick who was present as the acting platoon commander when Lance Corporal Magnussen assumed command of his section was significant. The pertinent parts of that evidence are:

... therefore considered that Magnussen held the section together...That particular section took the brunt of the battle...¹⁷

... when the corporal does not do his job and leaves that section...Barry Magnussen then took over that particular job. The enemy never penetrated and never proceeded close to us and for that I would have to give credit to Barry Magnussen.¹⁸

38. **Precision, Accuracy and Truth of the New Evidence.** The Tribunal noted that the two publications were written well before the application for recognition for Lance Corporal Magnussen was made. The account of his rescue of Meller is verified and the Tribunal was satisfied that Sergeant Buick's oral evidence, provided on two occasions separated by seven years was consistent. The Tribunal was therefore satisfied that the new evidence was 'compelling and reliable'.

39. **Finding in Relation to New Evidence.** The Tribunal finds that the new evidence is valid and that these accounts pointed to at least one verified act of bravery and evidence of distinguished command when Lance Corporal Magnussen assumed command of his section. The Tribunal therefore considered that Lance Corporal Magnussen's actions warrant consideration of recognition 'judged against the criteria applying at the time'.

40. **Lance Corporal Magnussen's Eligibility for Imperial Awards.** The Tribunal noted that the Valour Inquiry summarises valour, gallantry and distinguished service criteria.¹⁹ Noting the finding that Lance Corporal Magnussen's actions included an act

¹⁵ Charles Mollison, *Long Tan and Beyond*, p 151-152

¹⁶ Terry Burstall, *The Soldiers Story*, pp84-85

¹⁷ Oral submission, Defence Honours and Awards Tribunal *Inquiry into unresolved recognition issues for the Battle of Long Tan*, Mr Bob Buick MM, 21 April 2009.

¹⁸ Oral submission, Mr Bob Buick MM, 2 March 2016.

¹⁹ Report of the Defence Honours and Awards Appeals Tribunal's *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour*, 2013, Appendix 6

of bravery and distinguished service in command, the Tribunal considered that if the new evidence was available to CO 6 RAR he may well have examined the eligibility criteria for the Military Medal (MM) and the MID. The former is for:

*'acts of gallantry and devotion to duty in action'*²⁰

The MID is for:

'an act of bravery'.²¹

41. **Finding in Relation to Eligibility for Imperial Awards.** The Tribunal, having considered the new evidence, finds that Lance Corporal Magnussen would have been recommended for the MM in recognition of his bravery in rescuing Meller, his devotion to duty in recovering ammunition whilst under fire and his distinguished service when he successfully assumed command of his section and denied the enemy.

42. **Eligibility for Contemporary Awards.** The Tribunal noted that Lieutenant Colonel Smith seeks a Commendation for Gallantry for Lance Corporal Magnussen but does not make a case for why he has selected this level of award. The Tribunal noted that the MM was a Level 3 Imperial gallantry award and that this award is no longer available under the Australian system of honours and awards. Having found that Lance Corporal Magnussen's actions in the Battle included an act of bravery and distinguished service in command, the Tribunal determined that the Commendation for Gallantry (available for 'acts of bravery in action') was insufficient recognition of his gallantry and command. The Tribunal considered that at all times, including during the rescue of Meller, the recovery of vital ammunition and when assuming command of his section, he was exposed to 'hazardous circumstances'. Accordingly, the Tribunal recommends that Lance Corporal Magnussen be awarded the Medal for Gallantry, a contemporary level 3 gallantry award for 'acts of gallantry in action in hazardous circumstances' on 18 August 1966.

Finding in Relation to the Merits Review

43. The Tribunal finds that the original nomination of Lance Corporal Magnussen for the MID was in all likelihood rejected by CO 6 RAR on 22 August 1966 due to a lack of evidence to support the award. The Tribunal finds that valid new evidence has subsequently been provided which supports Lance Corporal Magnussen's eligibility for the MM. As that award is no longer available, the Tribunal recommends that he be awarded the Medal for Gallantry for 'acts of gallantry in action in hazardous circumstances' on 18 August 1966.

²⁰ Ibid

²¹ Ibid, p40 [4-27]

TRIBUNAL DECISION

44. The Tribunal decided to recommend to the Minister that the decision of the Chief of Army to refuse to recommend Lance Corporal Barry Eugene Magnussen for the Commendation for Gallantry be set aside and substituted with a new decision to recommend Lance Corporal Barry Eugene Magnussen for the Medal for Gallantry.

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.

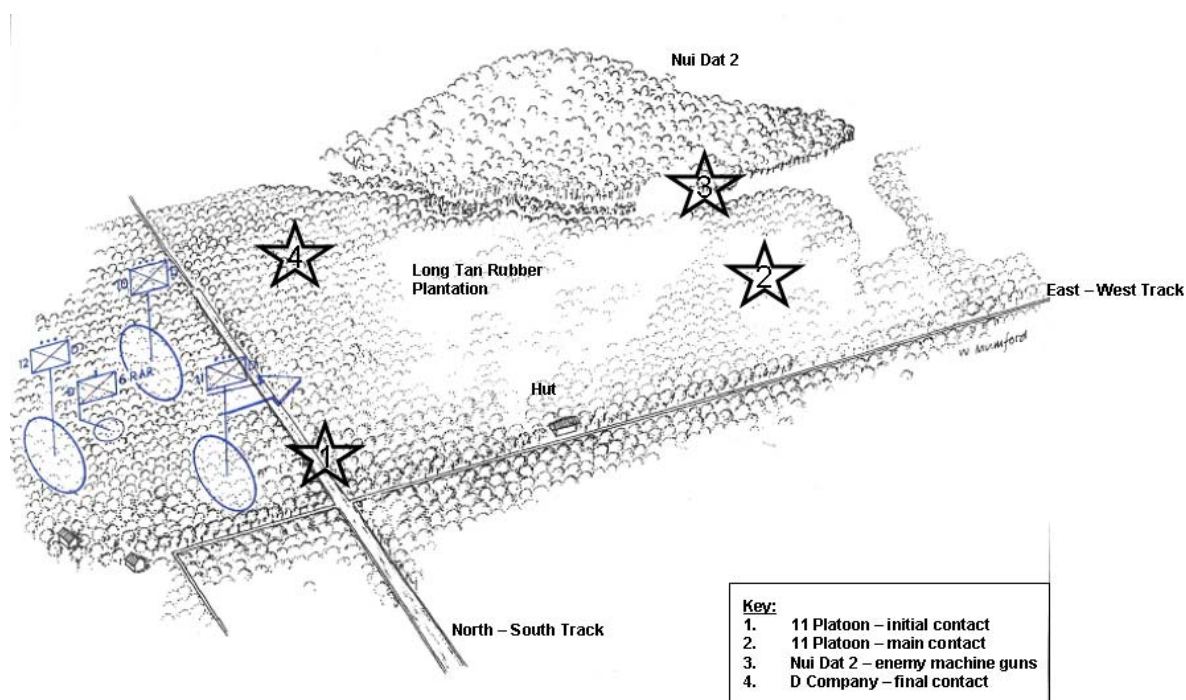
9. D Company was comprised of three rifle platoons (each of approximately 30 soldiers) commanded by a company headquarters element (CHQ). CHQ contained the command group, signallers, a medical orderly and the attached FO party. CHQ was protected by an infantry support section. Each rifle platoon carried 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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Submission 14 – Lieutenant Colonel Charles Mollison (Retd)

Submission 15 – Colonel Peter Dinham (Retd)

Submission 16 – Colonel Bob Hagerty (Retd)

Submission 19 – Mr Ian Savage

Submission 25 – Mr John Heslewood

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

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