



Australian Government

Defence Honours & Awards Tribunal

**INQUIRY INTO THE ELIGIBILITY OF ROYAL AUSTRALIAN AIR
FORCE PERSONNEL, SERVING IN VIETNAM BETWEEN
29 MARCH AND 29 APRIL 1975, FOR THE VIETNAM MEDAL**

LETTER OF TRANSMISSION

INQUIRY INTO THE ELIGIBILITY OF ROYAL AUSTRALIAN AIR FORCE PERSONNEL, SERVING IN VIETNAM BETWEEN 29 MARCH AND 29 APRIL 1975, FOR THE VIETNAM MEDAL

The Hon Dr Mike Kelly AM MP
Parliamentary Secretary for Defence Support
Parliament House
Canberra ACT 2600

Dear Dr Kelly

I am pleased to present the report of the Defence Honours and Awards Tribunal into the eligibility of Royal Australian Air Force Personnel, serving in Vietnam between 29 March and 29 April 1975, for the Vietnam Medal

The inquiry was conducted in accordance with the Terms of Reference. The panel of the Tribunal that conducted the inquiry arrived unanimously at the findings and recommendations set out in its report.

Yours sincerely



Professor Dennis Pearce AO

Chair

11 November 2009

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TERMS OF REFERENCE

On 1 May 2009, the Parliamentary Secretary for Defence Support, the Hon Dr Mike Kelly AM MP, requested the Defence Honours and Awards Tribunal to inquire into and report on the eligibility of Royal Australian Air Force personnel serving in Vietnam between 29 March and 29 April 1975 to receive the Vietnam Medal.

The Terms of Reference for the inquiry read:

The Defence Honours and Awards Tribunal shall inquire into and report on the eligibility of Royal Australian Air Force personnel serving in Vietnam between 29 March and 29 April 1975 (including the evacuation of the Australian Embassy in Saigon) to receive the Vietnam Medal for that service.

In conducting its inquiry the Tribunal shall:

- (a) have regard to the terms and objectives of the Royal Warrant for the Vietnam Medal dated 8 June 1968 and the terms of any other relevant Award or Medal (noting that the Australian Active Service Medal with Clasp “Vietnam” has already been awarded for this service);
- (b) have regard to current policy that service rendered in Vietnam after 27 January 1973 does not constitute qualifying service for the Vietnam Medal;
- (c) examine relevant material and make findings in regard to service provided by the Royal Australian Air Force personnel in Vietnam between 29 March and 29 April 1975 and the circumstances in which it was provided;
- (d) consider in light of the abovementioned examination and findings whether the current policy referred to (b) above is reflective of the intent or terms of the abovementioned Royal Warrant for the Vietnam Medal; and
- (e) make recommendations in regard to its findings as to the eligibility of Royal Australian Air Force personnel serving in Vietnam between 29 March and 29 April 1975 for the Vietnam Medal.

The Tribunal is to determine its own procedures, in accordance with the general principles of procedural fairness, when conducting its inquiry as set out in these Terms of Reference. In this regard, the Tribunal may interview such persons as it considers appropriate and consider material provided to it that is relevant to these terms of reference.

The Tribunal is to report, in writing, to the Parliamentary Secretary for Defence Support on its findings and recommendations that arise from the inquiry. In making its findings the Tribunal is to arrive at a fair and sustainable response to current and future claims for recognition and also maintain the integrity of the Australian honours system and identify any consequential impact any finding or recommendation may have on that system.

EXECUTIVE SUMMARY

1. The Defence Honours and Awards Tribunal was established administratively in July 2008. It inquires into, and in its present role makes recommendations to the Government on, matters referred to it by the Government relating to the granting of honours and awards to serving and former members of the Australian Defence Force.

2. The Tribunal may consider individual claims to medals that have been refused by the relevant awarding authority. It may also consider issues of principle relating to Defence services honours and awards.

3. On 1 May 2009, the Parliamentary Secretary for Defence Support, the Hon Dr Mike Kelly AM MP, requested the Tribunal to inquire into and report on the eligibility of Royal Australian Air Force (RAAF) personnel of Detachment S serving in Vietnam between 29 March and 29 April 1975 (including the evacuation of the Australian Embassy in Saigon) to receive the Vietnam Medal for that service. The terms of reference for this inquiry are set out in full at the commencement of this report.

4. This reference was undertaken by the following members of the Tribunal:

Mrs Sigrid Higgins (Chair)
Vice Admiral Don Chalmers AO (Retd)
Mr John Jones AM (Retd)
Air Commodore Mark Lax CSM (Retd)

5. The Tribunal commenced its inquiry on 23 June 2009. It received written submissions from seven individuals and the Department of Defence. Of the individual submitters, four were from former RAAF personnel of Detachment S who had served in Vietnam at the relevant time and whose application for the Vietnam Medal was refused by the Department of Defence. The Tribunal was informed that there were about 200 RAAF personnel who served in Vietnam during the relevant time in 1975.

6. The claimants contended that all RAAF personnel who served in Vietnam in 1975 are, or should be made, eligible for the Medal because:

- (a) the Vietnam war did not end in January 1973 – it ended on 29 April 1975, which has been recognised for the purpose of veterans' entitlements and in other areas; and
- (b) the service they rendered was 'warlike service'.

7. The Tribunal carefully examined the intent and purpose of the Vietnam Medal as set out in the express terms of the Royal Warrant and its regulations, together with the nature of the service rendered by the RAAF personnel between 29 March and 29 April 1975 and the terms of other awards and entitlements which have recognised the service rendered by these servicemen.

8. After considering all the material before it, including oral submissions, the Tribunal's findings are that:

- (a) the express intent and purpose of the Vietnam Medal was to recognise service rendered 'in assisting the forces of the Republic of Vietnam to repel

aggression' - the service rendered by the RAAF members of Detachment S was not of this nature, it was humanitarian in nature;

- (b) Australia's commitment to assist 'the forces of the Republic of Vietnam to repel aggression' ended on 11 January 1973 with the declaration by the Governor-General of the cessation of hostilities - the service rendered by the RAAF members of Detachment S was more than two years after this end date;
- (c) The Queen determined 27 January 1973 to be the last date of service for eligibility for the Vietnam Medal - the service rendered by the RAAF members of Detachment S was more than two years after this end date;
- (d) the express intent and purpose of the Vietnam Medal, including the dates within which the service is to be rendered, is consistent with provisions of the *Veterans' Entitlement Act 1986* (VEA) and not inconsistent with the Nominal Roll of Vietnam Veterans or the Honour Roll;
- (e) the service rendered by the RAAF members of Detachment S was after the introduction of the Australian system of honours and awards on 14 February 1975;
- (f) to extend eligibility to the RAAF personnel would require the Government to seek amendment of the award, which is an Imperial award. To seek such an amendment would be contrary to the Government's 1992 announcement that Australians were to be recognised exclusively through the Australian system of honours and awards and no further recommendations would be made for Imperial honours. A recommendation to extend the eligibility of the Vietnam Medal would in effect amount to a recommendation for an Imperial honour; and
- (g) the service rendered by the RAAF members of Detachment S has been recognised under the Australian system of honours and awards with the award of the AASM with clasp 'VIETNAM 1975'. The 1994 Committee of Inquiry into Defence and Defence Related Awards found that the award of the ASM to the RAAF members adequately recognised their service. The Tribunal makes a similar finding and notes that the ASM was upgraded to the AASM in 1998.

RECOMMENDATIONS

Recommendation 1: That service rendered by the RAAF personnel of Detachment S, in Vietnam between 29 March and 29 April 1975, not be recognised as service falling within the intent and express terms of the Royal Warrant for the Vietnam Medal.

Recommendation 2: The Australian Government takes no action to recommend to the Government of the United Kingdom that the period of service for the Vietnam Medal be extended to include the service rendered by the RAAF members of Detachment S, who rendered served in Vietnam between 29 March and 29 April 1975.

Recommendation 3: The service rendered by the RAAF members of Detachment S in Vietnam between 29 March and 29 April 1975 has been appropriately recognised with the award of the Australian Active Service Medal, with clasp 'VIETNAM 1975'.

Recommendation 4: That no other award be considered for RAAF members of Detachment S as a result of their service in Vietnam between 29 March and 29 April 1975.

REPORT OF THE TRIBUNAL

CONDUCT OF THE INQUIRY

Introduction

1. The Defence Honours and Awards Tribunal (the Tribunal) was established administratively in July 2008. It inquires into, and in its present role makes recommendations to the Government on, matters referred to it by the Government relating to the granting of honours and awards to serving and former members of the Australian Defence Force. The Tribunal may consider individual claims to Defence medals and awards that have been refused by the relevant awarding authority. It may also consider issues of principle relating to Defence service honours and awards.

2. On 1 May 2009, the Parliamentary Secretary for Defence Support, the Hon Dr Mike Kelly AM MP, requested the Tribunal to inquire into and report on the eligibility of Royal Australian Air Force (RAAF) personnel serving in Vietnam between 29 March and 29 April 1975 to receive the Vietnam Medal. Accompanying that request were the Terms of Reference for the inquiry. These are set out at the commencement of this report.

Steps taken in the inquiry

3. The inquiry commenced on 23 June 2009, with prior advertisements being placed in the major newspapers nationally giving notice of the inquiry and the calling for submissions by Monday 1 June 2009.

4. In early June 2009, the Tribunal wrote to key organisations, and the Department of Defence, advising them of the inquiry and inviting them to make submissions. The Tribunal also wrote to individuals who had previously made representations to the Minister and the Department of Defence about the refusal of their application for the award of the Vietnam Medal.

5. The Tribunal received written submissions from seven individuals and the Department of Defence. Attached at Appendix 1 is a list of the individuals who made written submissions. Of these, four were claimants for the medal in that they were former RAAF personnel who had served in Vietnam during the relevant period - March/April 1975 (hereafter termed the claimants). A summary of their arguments and that of the other submitters is set out below.

6. At its first meeting on 23 June 2009, the Tribunal considered the written submissions and other material relevant to the Terms of Reference. The Tribunal also received oral submissions from a representative of the Department of Defence. At the conclusion of this meeting the Tribunal agreed to convene a further meeting so as to give individuals who had made written submissions an opportunity to make an oral submission by telephone, should they desire to do so.

7. The further meeting was convened on 1 July 2009 and the Tribunal heard oral submissions from four individuals, two of whom made submissions in support of the

eligibility of the award of the Vietnam Medal to the RAAF personnel and two of whom made submissions against.

Historical background and the circumstances in which the RAAF personnel rendered service between 29 March and 29 April 1975 in Vietnam

8. In 1959, the Democratic Republic of Vietnam (North Vietnam), backed by the Union of Soviet Socialist Republics (USSR) and the People's Republic of China (PRC) commenced a war against the Republic of Vietnam (South Vietnam). The United States of America (USA) sent support to South Vietnam and, in 1962, Australia as an ally of the US, also sent support¹. On 29 May 1964, the Government of the day (the Menzies Government) decided to send another 30 Australian Army Training Team Vietnam personnel to assist the army of South Vietnam and that these advisors would be permitted to accompany the South Vietnamese army into the field.²

9. In 1969 the PRC withdrew its support of North Vietnam and US foreign policy moved towards a rapprochement with the PRC and an agreement with the USSR to cease supplying North Vietnam with military support³. At the same time the US and its allies (including Australia) commenced the 'Vietnamisation' of the South Vietnam military forces⁴. This involved the slow reduction of the US contribution and that of its allies to the war and, at the same time allowed a building up of the armed forces of South Vietnam to a level whereby they could alone defend their country from any aggressive action by North Vietnam⁵. In accordance with this 'Vietnamisation' and the recommencement of the 1969 Paris Peace talks in March 1972, the RAAF's operational presence in Vietnam was officially coming to an end.⁶

10. The last Australian combat troops withdrew from Vietnam in December 1972 and the last Australian military personnel, the embassy guard in Saigon, left in June 1973. However, prior to this, on 11 January 1973, the Governor-General of the Commonwealth of Australia, the Right Honourable Sir Paul Hasluck, KG, GCMG, GCVO, proclaimed the cessation of hostilities in Vietnam of Australian Forces.

¹ Edwards P and Pemberton G, *Crisis and Commitments, the Politics and Diplomacy of Australia's involvement in Southeast Asian conflicts 1948-1965. The Official History of Australia's Involvement in Southeast Asian conflicts 1948-1975*, Allen and Unwin, Sydney, 1992, p 243.

² *Ibid.*, pp. 298-299.

³ Ham P, *Vietnam, The Australian War*, Harper Collins, Sydney, 2007, p. 661.

⁴ Edwards P, *A Nation at War, Australian Politics, Society and Diplomacy during the Vietnam War 1965-1975, The Official History of Australia's Involvement in Southeast Asian conflicts 1948-1975*, Allen and Unwin, Sydney, 1992, p. 205.

⁵ *Ibid.*.

⁶ Coulthard-Clark C, *The RAAF in Vietnam –Australian Air Involvement in the Vietnam War 1962-1975*, Allen & Unwin in association with the Australian War Memorial, p. 320.

11. Two weeks later, on 27 January 1973, the Paris Peace Accord was signed. Article 2 of the Accord provided for a binding and lasting cease-fire in Vietnam, taking effect from midnight on 27 January 1973. Article 5 provided for the withdrawal of all foreign troops from Vietnam within 60 days of the cease fire. As mentioned above, the Australian forces had already left and the only remaining troops were those guarding the Australian Embassy in Saigon. These remaining troops were not the subject of Article 5.

12. For two years after the signing of the Paris Peace Accord, North Vietnam worked on consolidating its hold in the central highlands of South Vietnam and in January 1975 it breached the Accord by placing Phuoc Binh, the capital of Phuoc Long province, under siege. As more cities fell under communist control, on 29 March 1975, the Australian Government responded to a request for humanitarian assistance from the South Vietnamese Government to relocate refugees who had been displaced as a result of the conflict.⁷

13. The response was to despatch a mission consisting of RAAF personnel (known as Detachment S) together with a flight of eight Richmond based Hercules, and two Dakotas from Butterworth, to Vietnam. The Government expressly described the mission as humanitarian, to transport fleeing civilian refugees in Da Nang to a place of safety within South Vietnam⁸. However, Da Nang fell before the mission got underway. The mission was then modified to providing relief further south and to assist in the distribution of Red Cross supplies and other non-military tasks. The first successful mission was conducted on 2 April 1975 when 1,500 to 1,800 civilians were evacuated from Phan Rang to Can Tho. On the following day, Phan Rang fell under communist control.

14. From 4 to 17 April 1975 war orphans were evacuated from Saigon to Bangkok in the US led mission known as 'Operation Babylift'.⁹ Other sorties carrying relief supplies were flown from Saigon to An Thoi and to the island of Phu Quoc. On 17 April 1975, the RAAF detachment based at Tan Son Nhut airport in Saigon was moved to Bangkok because of the deteriorating security situation. Four RAAF airfield defence guards, Mick Sheean, Trevor Nye, John Hansen and Ian Dainer, had been ordered to protect the embassy, staff and vehicles and to assist in the closure of the embassy and the safe evacuation of the ambassador and the Australian embassy staff.¹⁰ They were each armed with a pistol and were ordered to search all personnel before boarding any RAAF aircraft to prevent 'unauthorised people' boarding. The evacuation of the embassy staff was completed on 25 April 1975. However, as there was no room for the four defence guards, arrangements were made to evacuate them on another RAAF flight.

15. On 25 April 1975, Detachment S evacuated the Australian Embassy staff in Saigon and did not return. Five days later, on 30 April 1975, the Government of South Vietnam surrendered.

⁷ Ibid pp. 321 - 322 and Ham P, *Vietnam – the Australian War*, Chapter 44.

⁸ Ibid., p. 322.

⁹ Ibid., p. 324.

¹⁰ Ham P, op cit. pp. 600-601.

16. There were approximately 200 RAAF personnel who made up Detachment S during the relevant time in 1975.

SUMMARY OF THE ARGUMENTS OF THE CLAIMANTS AND THE SUBMITTERS

17. The essence of the arguments of the four claimants for the Vietnam Medal is that they have not been appropriately recognised for their service because of an inconsistent and/or anomalous application of:

- (a) the end date of the Vietnam War – it is asserted that it did not end at the signing of the Paris Peace Accord in January 1973 – it ended on 30 April 1975;
- (b) the nature of the service they rendered, which has been recognised by the Government as ‘warlike service’; and
- (c) the Nominal Roll of Vietnam Veterans which lists those servicemen and women who served in Vietnam between 23 May 1962 and 29 April 1975.

18. Each claimant has been awarded the Australian Active Service Medal (AASM) with Clasp ‘VIETNAM 1975’. However, they claim that this is not adequate recognition of their service. Their service they contend, on the basis of the above factors, has already been recognised as coming within the intent and purpose of the Vietnam Medal and on this basis the end qualifying date of service for that medal should be extended from 27 January 1973 to 29 April 1975.

19. One claimant also submitted that the end date for the Australian Active Service Medal 1945 – 1975 with clasp ‘VIETNAM’ should also be extended for the same reasons. This medal covers service in declared operations during 1945 to 1975. A declared operation for the purposes of the clasp ‘VIETNAM’ is the Vietnam War and that operation is declared to have ended in 1973.

20. The two other submitters argued that the RAAF personnel of Detachment S were not ‘serving’ in a ‘recognised military campaign’ in which Australia was involved and therefore were not and should not be made eligible to be awarded the Vietnam Medal. They say that the military campaign in which Australia was involved ended in January 1973. These submitters acknowledged that hostilities between North and South Vietnam continued after this date and that the conditions in which RAAF personnel rendered service may have been ‘warlike’. However, they say that to extend eligibility of the Vietnam Medal to these personnel would be ‘inconsistent with the established convention of recognising wars or incidents which are classified as such to other incidental activities ...’.

21. The Department of Defence submitted that the Vietnam Medal, an Imperial campaign medal, ceased being available for service in Vietnam after the Governor-General’s proclamation of 11 January 1973 or, after 14 February 1975 on the commencement of the Australian honours and award system. The Department also pointed to the official records which clearly show that the RAAF personnel of Detachment S deployed to Vietnam in 1975 were at no time involved ‘in assisting the forces of the Republic of Vietnam to repel

aggression.’ What the official records show is that the service rendered by the RAAF personnel of Detachment S was humanitarian relief and even though the environment in which they rendered service was ‘warlike’ their service was not ‘assisting the forces of the Republic of Vietnam to repel aggression.’

A: THE VIETNAM MEDAL, THE AUSTRALIAN ACTIVE SERVICE MEDAL AND VETERANS’ ENTITLEMENTS

The Vietnam Medal

22. On 8 June 1968, the Queen, by Royal Warrant, created the Vietnam Medal. Attached at Appendix 2 is a copy of the Royal Warrant and the regulations made pursuant to it.

23. The objectives of the Medal are described in the Royal Warrant as follows:

‘Whereas We have given consideration to the need for recognition of the service of members of the Australian Armed Forces ... *in assisting the forces of the Republic of Vietnam to repel aggression*’ (italics added)

24. The Royal Warrant provided that the ‘Medal shall be awarded to those members of Our Australian Armed Forces who, on or after 29 May 1964, have rendered service in operations in Vietnam in accordance with the conditions specified hereinafter’ (see clause 4).

25. Regulations were made in accordance with the terms of the Royal Warrant on 23 December 1968. Clause 4 of the Regulations provided that:

‘the medal may be awarded to members of the Australian and New Zealand Forces who have rendered *qualifying service in operations in Vietnam on or after 29 May 1964 to a date to be decided*’ (italics added).’

26. Attached at Appendix 3 is a copy of the Regulations.

27. The Tribunal was provided with a copy of two internal Department of Defence Minute Papers dated 20 May 1974 and 10 September 1974. The first Minute Paper states that the Minister had ‘agreed that service after the 27 January 1973, date of ceasefire in Vietnam, should not be counted towards eligibility for the Vietnam Medal’ and that the Minister of State had requested the Governor-General to seek the Queen’s approval ‘for this terminal date.’ The second Minute Paper advised that ‘on 2 August 1974 the Queen approved that the eligibility for the Vietnam Medal should terminate after 27 January 1973, the date of the signing of the cease fire agreement.’

28. Copies of the Department of Defence Minute Papers dated 20 May and 10 September 1974 is at Appendix 4.

The Australian Active Service Medal

29. On 14 February 1975, an Australian system of honours and awards was established with the creation of the Order of Australia, the Australia Bravery Decoration and the National

Medal. Prior to this, Australians were recognised under the British honours and awards system, known as Imperial honours and awards. The Vietnam Medal was an Imperial award.

30. A comprehensive Australian system of honours and awards replaced the Imperial honours and awards, which were finally phased out in the late 1980s. On 5 October 1992 the Federal and State Governments announced that Australians were to be recognised exclusively through the Australian system and no further recommendations for Imperial honours would be made¹¹.

31. The Australian Active Service Medal (AASM), created by Letters Patent dated 13 September 1988, is an award made under the Australian system. The AASM was instituted ‘for the purpose of according recognition to members of the Defence Force and other certain persons **who render service in certain warlike operations**’ (emphasis added). A copy of the Letters Patent is at Appendix 5.

32. Clause 4(1) of the Regulations that govern the AASM provided that the medal may be awarded for services in connection with a ‘prescribed operation’. Clause 3 of the Regulations gave the Governor-General, on the recommendation of the Minister for Defence, the power to declare a ‘warlike operation’ in which members of the Australian Defence Forces were involved on or after 14 February 1975 as a ‘prescribed operation’ for the purposes of the Regulations.

33. On 14 August 1998, the members of Detachment S who served in Vietnam between 29 March and 29 April 1975 with the United Nations International Children’s Emergency Fund, became eligible to qualify for the award of the AASM, when the Governor-General made a declaration under the Regulations declaring this period to be a ‘prescribed operation’ for the purposes of the Regulations.¹² The Governor-General also made a determination as to the conditions of the award of the medal to be known as AASM with clasp ‘VIETNAM 1975’.

34. On 23 March 2001 the Governor-General revoked the abovementioned declaration and made a new declaration together with a new determination. The effect of the changes was to more clearly describe the 1975 operation by members of Detachment S and to simplify the conditions of the award to these members.

35. A copy of the declaration and determination by the Governor-General on 23 March 2001 is at Appendix 5.

¹¹ A matter of honour, The report of the Review of Australian Honours and Awards, Australian Government Publishing Service, Canberra, 1995, pp. 21-22.

¹² The members of Detachment S had previously been eligible to qualify for the Australian Service Medal (ASM): see Declaration made by the Governor-General on 13 August 1990 pursuant to the provisions of the ASM Regulations. This declaration was revoked at the same time as the 14 August 1998 AASM declaration was made.

Veterans' Entitlements

36. The *Veterans' Entitlements Act 1986* (VEA) makes provision for the payment of pensions and other benefits to, and medical treatment for, members of the Australian Defence Force who have been engaged in 'operational service'. The term 'operational service' was originally defined in section 6 of the Act and included those members of the Australian Defence Force who had provided continuous full time service outside Australia during World War 1, World War 2 or within 'an operational area'.

37. Entitlements under the VEA have no relevance to entitlements for an honour or award, unless the instrument creating the honour or award makes express provision for this. The Royal Warrant for the Vietnam Medal and its Regulations contain no such provision. Nevertheless, as the claimants' contentions are founded on the basis of inconsistency between the VEA and the Regulations for the Vietnam Medal, the relevant provisions of the VEA are discussed below.

38. The term 'operational area' is defined in section 5(1) of the VEA to mean those areas specified in Column 1 of Schedule 2 of the Act and for the period set out in Column 2 of that Schedule. The Schedule identifies 8 specific operational areas. Number 4 is stated as 'Vietnam (Southern Zone)' and the period during which it is stated to have been an operational area is 'the period from and including 31 July 1962 to and including 11 January 1973.' As mentioned in paragraph 11 above, the end date is the date on which the Governor-General declared the cessation of hostilities in Vietnam of Australian Forces.

39. Section 6 was repealed by the provisions of the *Veterans' Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997* (the 1997 Amendment Act): see Schedule 1 of that Act. In its place, a new section 6 was inserted together with six new sections (i.e. sections 6A to 6F) containing definitions for six categories of 'operational service'. Five of the categories were essentially those that had previously been contained in the repealed section 6, but in simplified terms. For example, section 6C defined post World War 2 service in an 'operational area' as 'operational service.' The definition of 'operational area' remained the same as did item 4 of Schedule 2 to the Act. A copy of the Schedule is at Appendix 7.

40. The remaining category was a new category of 'warlike and non-warlike service' as a form of 'operational service': see section 6F. The 1997 Amendment Act also inserted a definition of the terms 'non-warlike service' and 'warlike service' into section 5C(1) of the VEA. They were both defined to mean 'service in the Defence Force of a kind determined in writing by the Minister for Defence to be non-warlike service or warlike service'.

41. On 23 December 1997, the then Minister for Defence Industry, Science and Personnel, the Honourable Bronwyn Bishop, made a determination, on behalf of the Minister for Defence, under subsection 5C(1) of the VEA that:

'...[service] rendered as a member of the Australian Defence Force in **Vietnam (Southern Zone)** during the period between **12 January 1973 and 29 April 1975** (both dates inclusive) is warlike service for the purposes of the Act.'

42. A copy of this 1997 determination is at Appendix 8.¹³

43. As a consequence of this determination, the RAAF personnel who rendered service in Vietnam between 29 March and 29 April 1975 became eligible for benefits under the VEA. However, their eligibility for benefits under the Act does not arise out of service in any of the ‘operational areas’ described in Schedule 2 of the Act. As described above, the VEA distinguishes between ‘operational service’ that is war-like and ‘operational service’ in an ‘operational area’. The RAAF personnel of Detachment S fall within the former and not the latter. Those servicemen and women who served in Vietnam during the period 31 July 1962 and 11 January 1973 fall within the latter. Hence, the end date of the Vietnam ‘operational area’ under the VEA remains consistent with a January 1973 end date for eligibility of the Vietnam Medal.

B: CURRENT ASSESSMENT PROCEDURES FOR THE VIETNAM MEDAL

44. The current assessment procedures (loosely termed as policy) adopted by the Directorate of Honours and Awards of the Department of Defence (the Directorate) for the Vietnam Medal is that the intent of the regulations is to recognise service rendered by Australian Defence Force personnel during Australia’s involvement in ‘assisting the forces’ of South Vietnam ‘to repel aggression’ of the forces of North Vietnam and its allies. That involvement having officially ceased on 11 January 1973, with the Governor-General’s proclamation of cessation of hostilities, the Directorate has assessed the service rendered by the RAAF personnel between 29 March and 29 April 1975 as not being service falling within the terms of the Medal.

45. As mentioned above, clause 4 of the Royal Warrant provided that the Vietnam Medal was to be awarded to personnel who had rendered qualifying service in Vietnam from 29 May 1964 ‘to a date to be decided.’ The Directorate has to date interpreted the Governor-General’s proclamation of 11 January 1973 to be the end date for service for the medal. It has been during the course of the Tribunal’s inquiry that the Directorate has been made aware of the Departmental Minute Papers of 20 May and 10 September 1974, which evidence the decided end date of 27 January 1973, for the purpose of eligibility for the Vietnam Medal.

C: NATURE OF SERVICE PROVIDED BY THE RAAF PERSONNEL IN VIETNAM DURING MARCH AND APRIL 1975

The evidence

46. As outlined in the background above, the service provided by the RAAF personnel in Vietnam in 1975 was of a humanitarian nature. However, it was provided in circumstances of the ongoing armed conflict between the armies of North and South Vietnam.

47. One historian has described the 2 April 1975 evacuation of refugees from Phan Rang as a ‘pandemonium ... in the face of the expected enemy onslaught’ and that at one stage a

¹³ In light of the requirements under the *Legislative Instruments Act 2003*, this determination was revoked and replaced with a new determination in similar terms on 19 July 2006 by the then Minister for Veterans’ Affairs, the Honourable Bruce Billson, on behalf of the Minister for Defence.

RAAF Hercules 'was mobbed by refugees and [South Vietnam personnel] who panicked when four rockets landed about 400 meters away, prompting a soldier to fire warning shots into the air.'¹⁴ The soldier who fired was not a RAAF member as they had been previously directed to disarm.¹⁵

48. Another historian described the circumstances of this day as a 'state of chaos: thousands were trying to flee the North Vietnamese steamroller.'¹⁶

49. Group Captain Lyall Klaffer, the senior RAAF officer present, has described his experiences in Saigon, one day in early April 1975, as follows¹⁷:

'I was shaving in my room on the third or fourth floor before walking over to the Caravelle Hotel. I heard the chatter of machine guns and the screaming jet of a low flying aircraft, so I wandered over to the window to see what was causing the commotion. As I looked out, the pilot dropped a couple of high explosive bombs and all the windows on the Presidential Palace side of the hotel were smashed and blew in. ...'

50. In giving oral evidence to the Tribunal, one claimant explained that they were under fire from North and South Vietnamese troops. He said there was considerable panic and the South Vietnamese troops were desperate to leave on the RAAF aircraft. They had to 'literally fight them off' as they had been ordered to take no Vietnamese, including any locally employed Vietnamese Australian embassy staff.

The Tribunal's Findings

51. There does not appear to be any dispute that the nature of the service rendered by the RAAF members of Detachment S in Vietnam during April 1975 was humanitarian relief. The official records expressly describe it as such and the evidence about the various sorties made during this time is consistent with this. The aim of their missions was to provide assistance to displaced Vietnamese civilians and orphans as a result of the hostilities between the armed forces of North and South Vietnam.

52. Nor is it disputed that the environment in which the RAAF personnel rendered their services were 'warlike' because of the hostilities.

53. However, on the material before it, the Tribunal cannot find any support for the conclusion that the service rendered by the RAAF personnel was that of an armed combatant assisting the armed forces of South Vietnam to repel its aggressors. The evidence is to the contrary. As mentioned above, the official records show that Australian Defence Force personnel ceased assisting the armed forces of South Vietnam in repelling its aggressors as of

¹⁴ See Coulthard-Clark C, *The RAAF in Vietnam*, p. 329.

¹⁵ *Ibid.*, p322.

¹⁶ See Ham P, *op cit.* p. 592

¹⁷ See Coulthard-Clark C, *The RAAF in Vietnam*, p. 329.

11 January 1973, with the declaration of the Governor-General. There is no evidence of any declaration or commitment by the Australian Government, after this date, to recommence its support of the South Vietnamese armed forces in repelling their aggressor, the North Vietnamese forces. The fact that the Government of South Vietnam requested assistance of the Australian Government in 1975 and the Australian Government agreed to provide assistance does not mean that this was indicative of the Australian Government having recommenced its earlier form of support. The contrary is evidenced in the official records of the time.

D: IS THE CURRENT ASSESSMENT PROCEDURE REFLECTIVE OF THE INTENT OR TERMS OF THE ROYAL WARRANT FOR THE VIETNAM MEDAL?

54. The Tribunal finds that on the proper construction of the terms of the Royal Warrant for the Vietnam Medal that its intention was to recognise:

- (a) those members of the Australian Defence Force who were involved in armed combat, in support of the armed forces of South Vietnam, to repel their aggressors, the armed forces of North Vietnam, and
- (b) specified members of approved philanthropic organisations who served with these members of the Australian Defence Force in Vietnam.

55. That is, the Tribunal finds that the intent of the Vietnam Medal was to recognise service rendered in Vietnam, in the operational warlike campaign to which the Australian Government had committed its armed forces as of 29 May 1964 and ending on the date on which the Government determined its operational warlike campaign was to cease. The Tribunal finds that:

- (a) 11 January 1973, when the Governor-General declared a cessation of hostilities, or
- (b) 27 January 1973, being the date the Queen determined to be the end date under the regulations for the Vietnam Medal (see official Minute Papers of 20 May and 10 September 1974) and the date on which the Paris Peace Accord was signed

are the dates the Governments determined to be the end of Australia's involvement in the Vietnam operational warlike campaign and the Vietnam Regulations should be construed accordingly.

56. This finding by the Tribunal is supported by the provisions of the VEA which recognises two distinct types of service, one being for service up until 11 January 1973 and the other for service from 12 January 1973 to 29 April 1975. Nor is this finding inconsistent with the Department of Veterans' Affairs Nominal Roll of Vietnam Veterans, or the Australian War Memorial Roll of Honour, both of which relate to the 'Vietnam conflict' generally. It is well accepted that conflict between South and North Vietnam was ongoing during the period of Australian involvement between 24 May 1962 and 29 April 1975.

57. On the basis of this finding the Tribunal is satisfied that the current assessment procedure of the Directorate of Honours and Awards is reflective of and consistent with the intent of the Royal Warrant for the Vietnam Medal. As a consequence the service rendered by the RAAF members of Detachment S, in Vietnam between 29 March and 29 April 1975, cannot be described as being service of the same nature as that provided by those service men and women who served in Vietnam between 29 May 1964 and 11 January 1973. Nor can the Vietnam Regulations be construed to extend eligibility for service in Vietnam after these dates.

58. The Tribunal also finds that recognition of service by members of the Australian Defence Force after 14 February 1975, is governed by the Australian system of honours and awards and no longer through the Imperial system of honours and awards, including the Vietnam Medal. In this regard it is again noted that the service rendered by the RAAF members of Detachment S has received recognition under the Australian system of honours and awards by being eligible for the award of the Australian Active Service Medal (AASM) with clasp 'VIETNAM 1975'.

E: CONCLUSIONS AND RECOMMENDATIONS

59. In light of the Tribunal's findings the question remains as to whether it is appropriate, as contended by the claimants, to extend the eligibility for the award of the Vietnam Medal to the service that was rendered by the RAAF members of Detachment S who served in Vietnam during 1975.

60. Having regard to the submissions that have been made, the terms of the relevant awards and entitlements, together with the abovementioned findings, the Tribunal finds that extending the eligibility for the award of the Vietnam Medal as contended by the claimants would be inappropriate for the following reasons:

- (a) the express intent and purpose of the Vietnam Medal was to recognise service rendered 'in assisting the forces of the Republic of Vietnam to repel aggression' - the service rendered by the RAAF members of Detachment S was not of this nature, it was humanitarian in nature;
- (b) Australia's commitment to assist 'the forces of the Republic of Vietnam to repel aggression' ended on 11 January with the declaration by the Governor-General of the cessation of hostilities - the service rendered by the RAAF members of Detachment S was more than two years after this end date;
- (c) the Queen determined 27 January 1973 to be the last date of service for eligibility for the Vietnam Medal - the service rendered by the RAAF members of Detachment S was also more than two years after this end date;
- (d) the express intent and purpose of the Vietnam Medal, including the dates within which the service is to be rendered, is consistent with provisions of the VEA and not inconsistent with the Nominal Roll of Vietnam Veterans or the Honour Roll;

- (e) the service rendered by the RAAF members of Detachment S was after the introduction of the Australian system of honours and awards on 14 February 1975;
- (f) to extend eligibility to the RAAF personnel would require the Government to seek amendment of the award, which is an Imperial award. To seek such an amendment would be contrary to the Government's 1992 announcement that Australians were to be recognised exclusively through the Australian system of honours and awards and no further recommendations would be made for Imperial honours. A recommendation to extend the eligibility of the Vietnam Medal would in effect amount to a recommendation for an Imperial honour; and
- (g) the service rendered by the RAAF members of Detachment S has been recognised under the Australian system of honours and awards with the award of the AASM with clasp 'VIETNAM 1975'. The 1994 Committee of Inquiry into Defence and Defence Related Awards found that the award of the ASM adequately recognised their service. The Tribunal makes a similar finding and notes that the ASM was upgraded to the AASM in 1998.

61. In making its findings the Tribunal does not in any way seek to diminish the very valuable contribution that was made by the RAAF members of Detachment S in rendering service in Vietnam during 29 March and 29 April 1975. It merely finds that the service that was rendered was not service 'in assisting the forces of the Republic of Vietnam to repel aggression.'

62. On the basis of its findings about the service rendered by the RAAF members of Detachment S, the Tribunal also finds that there is no basis on which to consider extending the date of the award of the Australian Active Service Medal 1945 – 1975 with the clasp 'VIETNAM'. As mentioned in paragraph 19 above, this medal recognised the Vietnam War operation as having ended in January 1973, which is the same end period for the Vietnam Medal.

Recommendations

The Tribunal makes the following recommendations:

Recommendation 1: That service rendered by the RAAF personnel of Detachment S, in Vietnam between 29 March and 29 April 1975, not be recognised as service falling within the intent or express terms of the Royal Warrant for the Vietnam Medal;

Recommendation 2: The Australian Government takes no action to recommend to the Government of the United Kingdom that the period of service for the Vietnam Medal be extended to include those RAAF members of Detachment S, who rendered served in Vietnam between 29 March and 29 April 1975: and

Recommendation 3: The service rendered by the RAAF members of Detachment S in Vietnam between 29 March and 29 April 1975 has been appropriately recognised with the award of the Australian Active Service Medal, with clasp 'VIETNAM 1975'.

Recommendation 4: That no other award be considered for RAAF members of Detachment S as a result of their service in Vietnam between 29 March and 29 April 1975.

APPENDICES

Appendix 1 - Submissions

The Tribunal received submissions from the following people and organisation:

(Note: names have not been released as submissions are received in-confidence)

Multiple submissions were received from some people.

Appendix 2 - Royal Warrant for the Vietnam Medal

ROYAL WARRANT

The Vietnam Medal

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith,

To all to whom these Presents shall come,

GREETING:

Whereas We have given consideration to the need for recognition of the service of members of the Australian Armed Forces and by duly accredited members of approved philanthropic organisations serving with these forces in assisting the forces of the Republic of Vietnam to repel aggression;

And whereas We are desirous of recognising this service to Our Commonwealth of Australia;

We do by these presents for Us, Our Heirs and Successors institute and create a new Medal.

1. The Medal shall be designated and styled *The Vietnam Medal*.
2. The Medal shall be of silver and circular in shape bearing on the obverse Our Royal Effigy Crowned, and, on the reverse, the word 'Vietnam' inscribed above a symbolic representation of the ideological war in Vietnam, depicting the figure of man in the centre of the medal, standing between spherical shapes.
3. The Medal shall be worn on the left breast suspended by a yellow ribbon one and one quarter inches in width bordered on the left with a dark blue strip, representing the Navy and on the right a light blue strip, representing the Air Force, both being one quarter of an inch wide and edged on the inner side with strips of red, representing the Army, each one eighth of an inch wide. Within a space of one sixth of an inch in the centre of the ribbon, three vertical stripes in red of a lighter hue, each of equal width are super-imposed on the yellow, the distance between each stripe being equal to the width of the stripe.
4. The Medal shall be awarded to those members of Our Australian Armed Forces who, on or after 29 May 1964, have rendered service in operations in Vietnam in accordance with the conditions specified hereinafter.
5. Accredited members of approved Australian philanthropic organisations attached to these Forces in Vietnam in an official capacity for full-time duty in uniform shall also be eligible for the Medal.
6. Eligibility shall not be affected by the grant of any other award for service in Vietnam.

7. The conditions of award of the Medal shall be common to members of the three Services and shall be:

- (i) service of twenty-eight days, continuous or aggregated, in ships or craft employed in operations on inland waters or off the coast of Vietnam;
- (ii) service of one day or more on the posted strength of a unit or formation on land in Vietnam;
- (iii) one operational sortie over Vietnam or Vietnamese waters by aircrew on the posted strength of a unit allocated for direct support of operations in Vietnam; or
- (iv) service of thirty days, continuous or aggregated, for official visits, inspections or other occurrences of a temporary nature on duty in Vietnam, or in ships or craft engaged in operations off the Vietnamese coast.

8. The qualifying period of service as described in sub-paragraphs 7 (i) and 7 (iv) will be waived where a member's service is brought to an end because of death or evacuation owing to wounds or other disability due to service, or the member is awarded a British Honour, Decoration or a Medal of the status of the British Empire Medal or above, a Mention-in-Despatches or a Queen's Commendation for gallantry on a specific occasion during the uncompleted qualifying period.

9. Accredited members of philanthropic organisations, as defined in paragraph 5, qualify for the award if they have service of one day or more with forces engaged in the operations in Vietnam from 29 May 1964.

10. When a Mention-in-Despatches or a Queen's Commendation has been granted for service in operations in Vietnam, the appropriate Emblem will be worn on the ribbon of the Vietnam Medal.

11. The respective Service Boards are granted the authority to approve awards of the Medal to those who have already qualified, and to those who render service in the future when they have qualified.

12. It shall be competent for Our Governor-General in and over Our Commonwealth of Australia to cancel and annul the award of the Medal to any member of Our Armed Forces or to any member of an accredited organisation attached to these Forces.

(L.S.)

GIVEN under the Great Seal of Our Commonwealth of Australia at Our Court at St. James's this eighth day of June, One thousand nine hundred and sixty-eight, in the seventeenth year of Our Reign.

By Her Majesty's Command

Sgd. J.G. Gorton

PRIME MINISTER

Appendix 3 - Medals - Vietnam Medal Regulations

RESTRICTED

MBI 102-3

23 DEC 68

MEDALS - THE VIETNAM MEDAL

1. Royal approval has been given for the institution of a medal called "The Vietnam Medal" in recognition of the services of the Australian and New Zealand Armed Forces, and duly accredited members of approved philanthropic organizations serving with these Forces, in assisting the forces of the Republic of Vietnam to repel aggression.

Description

2. The medal is of silver and circular in shape. The obverse depicts the Royal Effigy Crowned whilst on the reverse the word "Vietnam" is inscribed above a symbolic representation of the ideological war in Vietnam.

3. The medal ribbon is yellow, one and a quarter inches wide, bordered on the left by a dark blue stripe and on the right by a light blue stripe both one quarter of an inch wide. Next to each outer stripe is a red stripe one eighth of an inch wide. Within a space of one sixth of an inch in the centre of the ribbon are three vertical stripes of a lighter red superimposed on yellow. The distance between each red stripe is equal to the width of the stripe.

Eligibility

4. The medal may be awarded to members of the Australian and New Zealand Forces who have rendered qualifying service in operations in Vietnam on or after 29 May 64 to a date to be decided.

5. Accredited members of approved Australian and New Zealand philanthropic organizations attached to these Forces in Vietnam in an official capacity for full-time duty in uniform are also eligible for the award. The accredited Australian philanthropic organizations are:

- a. The Australian Red Cross Society.
- b. The Salvation Army.
- c. The Young Men's Christian Association.
- d. The Campaigners for Christ.
- e. The Australian Forces Overseas Fund.

6. Eligibility is not affected by the grant of any other award for service in Vietnam.

RESTRICTED

.../Qualifying

Qualifying Conditions

7. The qualifying conditions, which are alternative, are:
- a. Service of one day or more on the posted strength of a unit or formation on land in Vietnam. (See Note 1)
 - b. Service of 28 days, continuous or aggregated, in ships or craft employed in operations under command of AFV on inland waters or off the coast of Vietnam. (See Note 2).
 - c. One operational sortie over Vietnam or Vietnamese waters by aircrew on the posted strength of a unit allocated for direct support of operations in Vietnam.
 - d. Service of 30 days, either continuous or aggregated, for official visits, inspections or other occurrences of a temporary nature on duty by members of the Australian or New Zealand Navies or Armies or Air Forces in Vietnam, or in ships or craft engaged in operations under command of AFV off the Vietnamese coast. (See Note 3).

Notes: 1. "Posted strength" means that a member has been the subject of a AHQ(MS) or CARO posting order.

2. In order to qualify under condition ^{b.} 7a., a member must be on the posted strength of a ship or craft allotted for Special Duty in the Special Areas of Vietnam and/or the waters adjacent thereto (as prescribed in MBI 216-1).

3. Qualifying service, under condition 7d. is restricted to service on duty in the Special Areas of Vietnam and/or the waters adjacent thereto (as prescribed in MBI 216-1) and will include the date of arrival in and date of departure therefrom.

8. Short Service. A member who has not completed the normal period of service required to qualify for the award of the medal will be awarded the medal if, during the uncompleted qualifying period, one of the following applies:

a. He dies or is evacuated owing to wounds or other disability due to service (see also Note Page 3).

b. He is awarded a British Honour, Decoration or a Medal of the status of the British Empire Medal or above, a Mention in Despatches or a Queen's Commendation for gallantry on a specific occasion.

Note: All claims by members who were on an official visit etc. to Vietnam or waters adjacent thereto (vide para. 7d.) and who were evacuated prior to the end of their visit etc. on account of a disability due to service (vide para. 8a.) are to be referred to AHQ (AG Branch) for decision.

9. Members of Philanthropic Organizations. The qualifying condition for accredited members of the approved philanthropic organizations shown in this order is service of one day or more with forces engaged in the operations in Vietnam from 29 May 64 to a date to be decided.

Mention in Despatches or Queen's Commendations.

10. When a Mention in Despatches or a Queen's Commendation has been granted for service in operations in Vietnam the appropriate Emblem is to be worn on the ribbon of the Vietnam Medal. Only one Emblem is to be worn irrespective of the number of Mentions in Despatches or Queen's Commendations received.

Provisional Approval to Wear the Ribbon.

11. Provided a member has rendered the required qualifying service, the CO of his unit may give provisional approval for the member to wear the ribbon. An entry, signed by an officer, is to be made in the member's Regimental Record of Service (AAB 83) as follows:

"Approved to wear the ribbon of the Vietnam Medal subject to verification by CARO."

12. This provisional authority is not an approval for the issue of the medal.

Issue of the Ribbon

13. All ranks authorized to wear the ribbon are to receive a free issue of the ribbon in accordance with the appropriate block scale. The issue is to be recorded in the member's AAB 83. Indents are to be submitted through the normal channels.

Issue of the Medal

14. Approval has been given for the Vietnam Medal to be inscribed with the Army number, initials and surname of recipients.

15. Serving Members. Units are to send to CARO, for confirmation, promulgation and issue of the medal, a nominal roll of serving members provisionally authorized to wear the ribbon. The format of the nominal roll is to be:

CLAIM FOR THE AWARD OF THE
VIETNAM MEDAL

<u>ARMY NO</u>	<u>RANK</u>	<u>NAME</u>	<u>INITIALS</u>	<u>DATES OF SERVICE IN VIETNAM</u>
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16. Former Members. Former members should be advised to apply direct to CARO stating:

- a. Number, rank, full name.
- b. Address to which the medal is to be sent.

17. Deceased Members. Vietnam Medals earned by deceased members of the Australian Military Forces are to be distributed in accordance with the War Services Estates Act, 1942. Next of kin or other persons who consider that they are entitled to the award due to a deceased member should be advised to apply direct to CARO, stating:

- a. Full name and address of applicant.
- b. Army number, rank and full name of the deceased.
- c. Relationship of applicant to the deceased.

CARO is responsible for determining to whom the award is to be sent and for advising applicants accordingly.

18. Personnel of the AMF who have rendered qualifying Service in the RAN, RAAF or New Zealand Forces.

- a. Applications for the Vietnam Medal which require verification of previous service are to be referred to CARO and not direct to the Service department or the country concerned.
- b. CARO is to arrange for the issue of the Vietnam Medal to all serving personnel of the AMF, irrespective of the Service in which the qualifying service was rendered (i.e. RAN, RAAF or New Zealand Forces).

RESTRICTED

5

MBI 102-3
23 DEC 68

19. Members of Philanthropic Organizations. Applications for the Vietnam Medal by representatives of approved philanthropic organizations are to be made to the Secretary of the headquarters of the organization to which the individual belonged during the period of service in respect of which the claim is made. The representative should request the Secretary to make such recommendation as is appropriate and forward the claim to CARO for verification and issue of the award.

Miniatures

20. Miniatures of the Vietnam Medal may be worn by those who are entitled to the award. Purchase is at individual expense.

Forfeiture and Restoration

21. The medal may be forfeited and restored in accordance with MBI 102-1.

(AG: 445-R33-19)

Index:

Dress
Honours and Awards

Appendix 4 - Department of Defence Minute Papers Dated 20 May 1974 and 10 September 1974

MINUTE PAPER

REFERENCE: 70/1659

SUBJECT:

VICTIM MEDAL - T.E. IAN JATH

Assistant Secretary,
(Naval Personnel)
Navv Office.

Your reference 35/201/3218.

Assistant Secretary,
(Personnel)
Army Office.

Your reference 445/833/19.

Assistant Secretary (ARP),
Air Office.

Your reference 642/3/18.

On the advice of the Services the Minister has agreed that Service# after the 27 January 1973, date of the ceasefire in Vietnam, should not be counted towards eligibility for the Vietnam medal.

2. We have been advised by his Department that the Special Minister of State has requested the Governor-General to seek the Queen's approval for this terminal date. The New Zealand Defence Liaison Staff have been advised.

(J.J. CORRIGAN)
for First Assistant Secretary
Manpower Policy and
Services Personnel Division

Manpower Policy and Services
Personnel Branch,
20 May 1974.

MINUTE PAPER

REFERENCE: 70/1659

SUBJECT: VIETNAM MEDAL - TOMBIA, ERIC

~~13 (AF), Navy Office~~
~~13 (RAS), Army Office~~
~~13 (ASD), Air Office~~ *13/02/74*

Reference: A. Your file 443/133/19
E. My minute of 24 May 1974

Advice has been received that on 2 August 1974 the Queen approved that the eligibility for the Vietnam Medal should terminate after 27 January 1973, the date of signing of the cease fire agreement.

3. The Australian Defence Representative, Wellington and the New Zealand Defence Liaison Staff, Canberra have been advised.

Qu/A
mi Sec

J. J. Curigan
(J.J. CURIGAN)
Chief Executive Officer
Services Personnel

Services Personnel Branch
10 September 1974

Appendix 5 - Letters Patent for the Australian Active Service Medal



**Commonwealth
of Australia**

Gazette

No. 9 335, Wednesday, 2 November 1988

Published by the Australian Government Publishing Service, Canberra

SPECIAL

Elizabeth R



ELIZABETH THE SECOND, by the Grace of God Queen of Australia
and Her other Realms and Territories, Head of the Commonwealth:

TO ALL to whom these Presents shall come,

GREETING:

WHEREAS it is desirable that there be instituted an Australian medal
for the purpose of according recognition to members of the Defence Force and
certain other persons who render service in certain warlike operations:

KNOW YOU that We do by these Presents institute a medal to be
designated and styled the Australian Active Service Medal:

AND WE DO ordain that the award of the Australian Active Service
Medal shall be governed by the Regulations set out in the Schedule.

IN WITNESS whereof We have caused these Our Letters to be made
Patent.

GIVEN under the Great Seal
of Australia at Our Court at
St James's on 13 September 1988.

By Her Majesty's Command,



Bob Hawke

Prime Minister

SCHEDULE

AUSTRALIAN ACTIVE SERVICE MEDAL REGULATIONS

Short title

1. These Regulations may be cited as the Australian Active Service Medal Regulations.

Interpretation

2. In these Regulations—

- "clasp" means a device to denote a prescribed operation;
- "Defence Force" has the same meaning as in the *Defence Act 1903*;
- "Medal" means the Australian Active Service Medal;
- "Minister" means the Minister of State for Defence;
- "prescribed operation" means an operation in respect of which a declaration has been made under regulation 3.

Declaration of prescribed operations

3. The Governor-General, on the recommendation of the Minister, may declare a warlike operation in which members of the Defence Force are, or have been on or after 14 February 1975, engaged, to be a prescribed operation for the purposes of these Regulations.

Conditions for award of the Medal

4. (1) The Medal may be awarded for service in or in connection with a prescribed operation.

(2) The conditions for the award of the Medal are the conditions determined by the Governor-General on the recommendation of the Minister.

(3) Any subsequent award of the Medal to the same person shall be made in the form of a further clasp to the Medal.

(4) The persons to whom the Medal may be awarded are—

- (a) persons who served in a prescribed operation as members of the Defence Force; and
- (b) persons included in a class of persons determined by the Minister, for the purposes of this regulation.

(5) The Medal may not be awarded except to a person who fulfils the conditions for the award of the Medal.

Making of awards

5. Awards of the Medal shall be made by the Governor-General on the recommendation of the Chief of the Defence Force or his delegate.

Design of the Medal

6. The design of the Medal shall be as prescribed.

Wearing of the Medal

7. The manner of wearing the Medal shall be as determined by the Governor-General.

Registrar of Awards

8. (1) There shall be a Registrar of Awards who shall be appointed by the Governor-General and who shall maintain a Register of the names of persons to whom the Medal has been awarded.

(2) The Registrar shall keep such other records relating to the award of the Medal as the Governor-General directs.

Cancellation and reinstatement

9. (1) The Governor-General may cancel an award of the Medal and may reinstate an award so cancelled.

(2) Where an award of the Medal is cancelled, the name of the person to whom the award was made shall be erased from the Register and the person shall return the Medal to the Registrar.

(3) Where an award that has been cancelled pursuant to sub-regulation (1) is reinstated, the Registrar shall restore the entry or entries in the Register that had been erased.

Appendix 6 - Declarations of 14 August 1998 and 23 March 2001 made pursuant to clause 4(1) of the AASM



Commonwealth
of Australia

Gazette

No. S 408, Tuesday, 18 August 1998

Published by AusInfo, Canberra

SPECIAL



Government House
Canberra ACT 2600

It is notified for general information that the Governor-General has approved certain conditions for award of the Australian Active Service Medal with Clasps 'VIETNAM 1975' and 'BALKANS', the Australian Service Medal with Clasps 'BALKANS', 'IRAQ' and 'KUWAIT', and the Australian Service Medal 1945-75 with Clasp 'GERMANY', as detailed in the following Determinations:

COMMONWEALTH OF AUSTRALIA

AUSTRALIAN ACTIVE SERVICE MEDAL REGULATIONS

DECLARATION UNDER REGULATION 3

DETERMINATION UNDER SUBREGULATION 4(2)

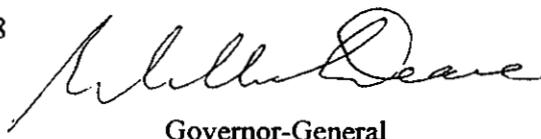
I, **WILLIAM PATRICK DEANE**, Governor-General of the Commonwealth of Australia, acting under the Australian Active Service Medal Regulations set out in the Schedule to Letters Patent dated 13 September 1988, ("the Regulations"), and on the recommendation of the Minister for Defence Industry, Science and Personnel, hereby:

- (a) **revoke** the Declaration and Determination made on 13 August 1990 under regulation 3 and subregulation 4(2) respectively of the Australian Service Medal Regulations;
- (b) **declare**, under Regulation 3 of the Regulations, the Royal Australian Air Force activities with the United Nations International Children's Emergency Fund in Vietnam during the period that commenced on 29 March 1975 and ended on 28 April 1975 to be a prescribed operation for the purposes of the Regulations; and



- (c) **determine, under Subregulation 4(2) of the Regulations, that the conditions for award of the Australian Active Service Medal with Clasp 'VIETNAM 1975' for that prescribed operation are:**
- (i) **the Medal may be awarded to a member of the Royal Australian Air Force who rendered service as such a member of the Australian element of the declared operation for a period of seven days, or for periods amounting in the aggregate to seven days;**
 - (ii) **the qualifying period of service as described in subparagraph (c)(i) may be deemed by the Chief of the Defence Force or his delegate to have been established notwithstanding that the member has not met the qualifying periods described; and**
 - (iii) **the Chief of the Defence Force or his delegate in exercising his discretion to deem under subparagraph (c)(ii) shall take into account whether service in relation to the prescribed operation:**
 - (A) **was terminated owing to the death, evacuation due to illness or injury or other disability due to service, of a member as described above; or**
 - (B) **was terminated due to Government or Defence Force reasons.**

Dated 14th August 1998



Governor-General

By His Excellency's Command



Minister for Defence Industry, Science and Personnel



COMMONWEALTH OF AUSTRALIA

DECLARATION AND DETERMINATION UNDER THE AUSTRALIAN ACTIVE SERVICE MEDAL REGULATIONS

I, **WILLIAM PATRICK DEANE**, Governor-General of the Commonwealth of Australia, pursuant to the Australian Active Service Medal Regulations contained in the Schedule to Letters Patent dated 13 September 1988, ("the Regulations"), and on the recommendation of the Minister for Defence, hereby:

- (a) **revoke** the Declaration and Determination made on 14 August 1998 under regulation 3 and subregulation 4(2) respectively of the Regulations;
- (b) **declare**, under regulation 3 of the Regulations, warlike operations in which members of the Australian Defence Force were engaged, namely the Royal Australian Air Force activities with Transport Support Flight Butterworth or Headquarters Richmond Detachment S to the United Nations International Children's Emergency Fund in Vietnam during the period that commenced on 29 March 1975 and ended on 28 April 1975, to be a *prescribed operation* for the purposes of the Regulations; and
- (c) **determine**, under subregulation 4(2) of the Regulations, that the conditions for award of the Australian Active Service Medal with Clasp 'VIETNAM 1975' ("the Medal") for that *prescribed operation* are:
 - (i) the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member while allotted and posted as a member of the Australian element for duty to the *prescribed operation*;

- (ii) the Medal may be awarded to a person who rendered service as part of the Australian element of the *prescribed operation* and who, in accordance with a determination made by the Minister under paragraph 4(4)(b) of the Regulations, is in a class of persons who may be awarded the Medal.

Dated 23rd March 2001



Governor-General

By His Excellency's Command



PETER REITH
Minister for Defence

Appendix 7 - Schedule 2 of the *Veterans' Entitlement Act 1986*

Schedule 2—Operational areas

Section 5B

Column 1	Column 2
Description of operational areas	Period
1. The area of Korea, including the waters contiguous to the coast of Korea for a distance of 185 kilometres seaward from the coast.	The period from and including 27 June 1950 to and including 19 April 1956
2. The area of Malaya, including the waters contiguous to the coast of Malaya for a distance of 18.5 kilometres seaward from the coast.	The period from and including 29 June 1950 to and including 31 August 1957
3. The area comprising the territories of the countries then known as the Federation of Malaya and the Colony of Singapore, respectively.	The period from and including 1 September 1957 to and including 31 July 1960
4. Vietnam (Southern Zone).	The period from and including 31 July 1962 to and including 11 January 1973
5. All that part of the Federation of Malaya contained within the area bounded by a line commencing at the intersection of the western shore of the Federation of Malaya at high-water mark and the boundary between the States of Perlis and Kedah; thence proceeding generally north-easterly along that boundary to its intersection with the railway line from Arau to Penang Tunggai; thence following that railway line generally southerly to its intersection with the northern boundary between the States of Penang and Kedah; thence proceeding along the boundary between those States generally easterly, southerly and westerly to the intersection of the boundaries of the States of Penang, Kedah and Perak; thence following the boundary between the States of Penang and Perak to its intersection with the railway line from Penang Tunggai to Taiping; thence	The period from and including 1 August 1960 to and including 16 August 1964

Column 1	Column 2
Description of operational areas	Period
<p>following that railway line generally southerly, easterly and southerly to its intersection with the parallel 4 degrees 51 minutes north latitude; thence proceeding due south in a straight line to the intersection of that line with the parallel 4 degrees 30 minutes north latitude; thence proceeding along that parallel to its intersection with the eastern bank of the Perak River; thence following that bank of that river to its intersection with the parallel 4 degrees 47 minutes north latitude; thence proceeding in a straight line to the intersection of the boundaries of the States of Perak, Kelantan and Pahang; thence proceeding along the boundary between the States of Kelantan and Pahang to its intersection with the meridian 101 degrees 48 minutes east longitude; thence proceeding in a straight line to the intersection of the eastern bank of the Raya River with the eastern bank of the Nenggiri River; thence following that bank of that river to its intersection with the western bank of the Galas River; thence proceeding in a straight line due east to the eastern bank of that river; thence following that bank of that river and the eastern bank of the Kelantan River to its intersection with the eastern shore of the Federation of Malaya at high-water mark; thence following that shore at high-water mark to its intersection with the boundary between the Federation of Malaya and Thailand; thence proceeding along that boundary to the western shore of the Federation of Malaya and Thailand at high-water mark; thence following that shore of the Federation of Malaya at high-water mark to the point of commencement.</p>	

Schedule 2 Operational areas

Column 1	Column 2
Description of operational areas	Period
6. All that area of land and waters (other than islands and waters forming part of the territory of the Republic of the Philippines) bounded by a line commencing at the intersection of the northern shore of Borneo at high-water mark with the boundary between Kalimantan and Sarawak; thence proceeding generally south-easterly, easterly and northerly along that boundary to its junction with the boundary between Kalimantan and Sabah; thence proceeding generally easterly along that boundary to its intersection with the eastern shore of Borneo at high-water mark; thence proceeding in a straight line easterly to the intersection of the western shore of the island of Sebatik at high-water mark with the boundary between that part of that island that forms part of Sabah and that part of that island that forms part of Kalimantan; thence proceeding generally easterly along that boundary to its intersection with the eastern shore of the island of Sebatik at high-water mark; thence proceeding in a straight line easterly to a point 80.5 kilometres east (true) of the intersection of the eastern shore of Borneo at high-water mark with the boundary between Kalimantan and Sabah; thence proceeding generally northerly and south-westerly parallel to and at a distance of 80.5 kilometres from the eastern and northern shores, respectively, of Borneo at high-water mark to a point 80.5 kilometres north (true) of the point of commencement; thence proceeding in a straight line southerly to the point of commencement.	The period from and including 8 December 1962 to and including 16 August 1964
7. The territories of Malaysia, Brunei and Singapore and the waters adjacent to those countries.	The period from and including 17 August 1964 to and including 30 September 1967

Column 1	Column 2
Description of operational areas	Period
<p>8. All that area of land and waters (other than land or waters forming part of the territory of Cambodia or China) bounded by a line commencing at the intersection of the boundary between Cambodia and Vietnam (Southern Zone) with the shore of Vietnam (Southern Zone) at high-water mark; thence proceeding in a straight line to a point 185.2 kilometres west (true) of that intersection; thence proceeding along an imaginary line parallel to, and at a distance of 185.2 kilometres from, the shore of Vietnam at high-water mark to its intersection with the parallel 21 degrees 30 minutes north latitude; thence proceeding along that parallel westerly to its intersection with the shore of Vietnam at high-water mark; thence following the shore of Vietnam at high-water mark to the point of commencement.</p>	<p>The period from and including 31 July 1962 to and including 11 January 1973</p>
<p>9. The area comprising the United Nations Mandated Territory of Namibia and the area of land extending 400 kilometres outwards from the borders of Namibia into the adjoining countries of Angola, Zambia, Zimbabwe, Botswana and South Africa (including Walvis Bay).</p>	<p>The period from and including 18 February 1989 to and including 10 April 1990</p>

Schedule 2 Operational areas

Column 1	Column 2
Description of operational areas	Period
<p>10. The area comprising the following countries and sea areas:</p> <p>(i) Bahrain, Oman, Qatar, Saudi Arabia, the United Arab Emirates and the Island of Cyprus;</p> <p>(ii) the sea areas contained within the Gulf of Suez, the Gulf of Aqaba, the Red Sea, the Gulf of Aden, the Persian Gulf and the Gulf of Oman;</p> <p>(iii) the sea area contained within the Arabian Sea north of the boundary formed by joining each of the following points to the next:</p> <p>(A) 20° 30' N 70° 40' E;</p> <p>(B) 14° 30' N 67° 35' E;</p> <p>(C) 8° 30' N 60° 00' E;</p> <p>(D) 6° 20' N 53° 52' E;</p> <p>(E) 5° 48' N 49° 02' E;</p> <p>(iv) the sea area contained within the Suez Canal and the Mediterranean Sea east of 30° E.</p>	<p>The period from and including 2 August 1990 to and including 9 June 1991</p>
<p>11. The area comprising Iraq and Kuwait</p>	<p>The period from and including 23 February 1991 to and including 9 June 1991</p>
<p>12. The area comprising Cambodia and the areas in Laos and Thailand that are not more than 50 kilometres from the border with Cambodia</p>	<p>The period from and including 20 October 1991 to and including 7 October 1993</p>
<p>13. The area comprising the former Yugoslavia</p>	<p>The period from and including 12 January 1992 to and including 24 January 1997</p>
<p>14. The area comprising Somalia</p>	<p>The period from and including 20 October 1992 to and including 30 November 1994</p>

**Appendix 8 - Determination of 23 December 1997 made pursuant to s5C(1) of the
*Veterans' Entitlement Act 1986***

revoked 19/7/06 to
enable registration in accordance
with the LIA 2003.



Minister for Defence Industry, Science and Personnel

Veterans' Entitlements Act 1986

Determination of Warlike Service

I, Bronwyn Bishop, Minister for Defence Industry, Science and Personnel, on behalf of the Minister for Defence, under subsection 5C(1) of the *Veterans' Entitlements Act 1986* (the Act), determine that service rendered as a member of the Australian Defence Force in **Vietnam (Southern Zone)** during any period between **12 January 1973 and 29 April 1975** (both dates inclusive) is **warlike service** for the purposes of the Act.

Dated this *23rd* day of *December* 1997

A handwritten signature in cursive script that reads 'Bronwyn Bishop'.

BRONWYN.BISHOP

Minister for Defence Industry, Science and Personnel



Veterans' Entitlements Act 1986

Determination of Warlike Service

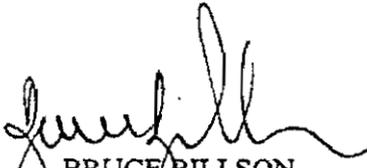
I, Bruce Billson, Minister for Veterans' Affairs, for the Minister for Defence:

- a. revoke the Determination made under subsection 5C(1) of the *Veterans' Entitlements Act 1986* (the Act) on 23 December 1997 in relation to service in Vietnam (Southern Zone) during the period from 12 January 1973 and including 29 April 1975; and
- b. determine that:
 - (i). service rendered as a member of the Australian Defence Force during the period from 12 January 1973 and including 29 April 1975 in the specified area, is warlike service for the purposes of the definition of "warlike service" in subsection 5C(1) of the Act, and
 - (ii). the specified area comprises Vietnam (Southern Zone).
- c. This Determination is taken to have commenced on 12 January 1973.

Dated

19th July

2006


BRUCE BILLSON
Minister for Veterans' Affairs
for the Minister for Defence

EXPLANATORY STATEMENT

Veterans' Entitlements Act 1986

Determination of Warlike Service – Vietnam (Southern Zone)

The *Veterans' Entitlements Act 1986* (the Act) provides for the payment of pensions and other benefits to, and medical treatment for, veterans and certain other persons, and for other purposes. In particular, it provides for automatic treatment for certain cancers, post traumatic stress disorder and some other prescribed conditions, access to the Veterans' Counselling Service, funeral benefits, Service pension, access to gold card and the Victoria Cross Allowance. Some of these entitlements and benefits require a member to have rendered "warlike service"; others only require "non-warlike service" for eligibility under the Act.

The purpose of this Determination is to revoke and replace the Determination made on 23 December 1997 ("the 1997 Determination") by then Minister for Defence Industry, Science and Personnel, the Honourable Bronwyn Bishop, in relation to service in Vietnam (Southern Zone). This Determination also remakes the 1997 Determination to overcome minor administrative impediments associated with mandatory registration requirements under the *Legislative Instruments Act 2003*. The text of this Determination is in similar terms to the 1997 Determination. This Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (the LIA) and is therefore subject to the registration and Parliamentary scrutiny regime outlined in the LIA.

This Determination applies to service during the period from and including 12 January 1973 to 29 April 1975, the period that members of the Australian Defence Force (ADF) were deployed on warlike service in Vietnam (Southern Zone). This Determination is expressed to commence retrospectively, from 12 January 1973, which is the date specified in the instrument (and the date of commencement of the 1997 Determination).

The retrospective operation of this Determination is required to ensure that no ADF member (or his or her legal personal representative as the case may be) is disadvantaged if claiming for death, injury or disease that occurred between the period when they commenced service on the Operation and the date that this Determination is registered on the Federal Register of Legislative Instruments. The retrospective application of this Determination does not affect the rights of a person (other than the Commonwealth or an authority of the Commonwealth) so as to disadvantage that person nor does it impose liabilities on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date this Determination is registered.

Consultation was considered inappropriate and unnecessary pursuant to section 18 of the LIA because the Determination relates to the service of members of the ADF.

Authority: Subsection 5C(1) of the *Veterans' Entitlements Act 1986*

Appendix 9 - Hearings

23 June 2009

Chair: Ms Sigrid Higgins

Members: VADM Don Chalmers AO (Retd), Mr John Jones AM, AIRCDRE Mark Lax CSM

Witnesses:

Mr Pat Clarke

Director, Defence Honours and Awards

1 July 2009

Chair: Ms Sigrid Higgins

Members: VADM Don Chalmers AO (Retd), Mr John Jones AM, AIRCDRE Mark Lax CSM

Witnesses:

Geoff Rose (Teleconference)

Michael Sheean (Teleconference)

SQNLDR Leslie Edwards (Retd) (Teleconference)

LTCOL Kevin Frampton (Retd) (Teleconference)

Appendix 10 - Written Sources Consulted by the Tribunal

Archival sources:

NAA A 1838 3014/2/7 part 1	South Vietnam political military situation
NAA A 6366 SA 1975/01T	Saigon Cables - Outwards - 28 January 1975 to 30 March 1975
NAA A1209 1975/691	Use of RAAF aircraft in Vietnam
NAA A4531 8/2/4	Saigon - RAAF evacuation of Vietnamese refugees and airlift of supplies
NAA A 463 1964/4301	Parliamentary question regarding honours and medal for Australians serving in South Vietnam
NAA A 1813 38/201/32	Vietnam medal policy
NAA A 1838 696/8/7/1	Vietnam UN relief operations - use of RAAF aircraft
NAA A 9186 198	RAAF unit history sheets
NAA A 6366 SA1974/10T	Saigon cables outward
NAA A 6366 SA1974/103T	Saigon cables outward
NAA A 5841 36	Campaign Medal in recognition of service in Vietnam.

Official publications:

Commonwealth of Australia Gazette S335, 2 November 1988

Commonwealth of Australia Gazette S408, 18 August 1998.

Commonwealth of Australia Gazette S296, 1 November 1991.

Commonwealth of Australia Gazette S102, 27 March 2001.

Commonwealth of Australia Gazette S64, 28 February 2002.

Internet sources:

Vietnam Veterans Association of Australia (VVAA) website

<http://www.vvaa.org.au/service.htm>

Australian War Memorial-Vietnam <http://www.awm.gov.au/atwar/vietnam.asp>

Details of United States armed forces medals and decorations

http://usmilitary.about.com/od/armymedals/ss/afem_3.htm

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Paris peace accords http://en.wikipedia.org/wiki/Vietnam_War#cite_note-197

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Coulthard-Clark C. *The RAAF in Vietnam: Australian air involvement in the Vietnam War 1962–1975*, The Official History of Australia's involvement in Southeast Asian conflicts 1948–1975, vol. 4, Allen & Unwin, Sydney, 1995.

Edwards P. *A Nation at War, Australian Politics, Society and Diplomacy during the Vietnam War 1965-1975*, The Official History of Australia's involvement in Southeast Asian conflicts 1948-1975, vol. 6, Allen and Unwin, Sydney, 1997.

Ham P. *Vietnam, The Australian War*, HarperCollins, Pymble, 2007.

Jones, H. *A crucible of power. A history of US foreign relations*. SR books, Wilmington, 2001.

Westad O and Quinn S. *The Third Indochina War*, Routledge, London, 2006.

Woodruff M, *Unheralded victory*, HarperCollins, London, 1999.