Australian Government

Defence Honours and Awards Appeals Tribunal

Cameron and the Department of Defence [2020] DHAAT 02 (23 January 2020)

File Number 2019/012

Re **Lieutenant Colonel Bruce Cameron MC (Retd)**
Applicant

And **Department of Defence**
Respondent

Tribunal Air Vice-Marshal John Quaife AM (Retd) (Presiding Member)
Major General Simone Wilkie AO (Retd)
Mr David Ashley

Hearing Date 29 October 2019

DECISION

On 23 January 2020 the Tribunal decided to affirm the decision of the Chief of Staff to the Minister for Defence Personnel that the following units are not eligible for the Republic of Vietnam Cross of Gallantry with Palm Unit Citation awarded to 8th Battalion, the Royal Australian Regiment:

- A Squadron, 1 Armoured Regiment;
- B Squadron, 3 Cavalry Regiment; and
- 1 Field Squadron, Royal Australian Engineers.

CATCHWORDS

FOREIGN AWARD – Republic of Vietnam Cross of Gallantry with Palm Unit Citation – eligibility criteria – whether the service of nominated units can be recognised.

LEGISLATION
Defence Act 1903 - ss 110T, 110V(1), 110VB(2).

REASONS FOR DECISION

Introduction

1. The Applicant, Lieutenant Colonel Bruce Cameron MC (Retd) (Colonel Cameron) seeks to extend the eligibility of the Republic of Vietnam Cross of Gallantry with Palm Unit Citation awarded to 8th Battalion, the Royal Australian Regiment (8RAR) to the following units:

- A Squadron, 1 Armoured Regiment;
- B Squadron, 3 Cavalry Regiment; and
- 1st Field Squadron, Royal Australian Engineers.

2. On 28 February 2017, Colonel Cameron wrote to the Hon. Dan Tehan MP, Minister for Defence Personnel, seeking the '*extension of eligibility to* (the above) *supporting arms for the Vietnamese Cross of Gallantry with Palm Unit Citation awarded to 8RAR for Operation HAMMERSLEY*'.

3. On 7 May 2017, Minister Tehan replied to Colonel Cameron advising him that '*the contribution made by the 8th Battalion throughout its tour of duty in Vietnam ... was recognised by the awarding of the Citation. The conditions of the award are specific and give no consideration of further award of the Citation for actions, however commendable, which fall outside these conditions. The Citation was awarded for the 8th Battalion's contribution in operations against the enemy throughout its deployment ... rather than Operation HAMMERSLEY alone. As such, consideration of extending eligibility for the Citation to units that supported the Battalion during this operation would be inconsistent with the original award.'*

4. On 10 September 2017, Colonel Cameron replied to the Minister expressing his view that the citation had not been awarded for 8RAR's whole tour, and that it was intended to be awarded to the whole of the '8RAR Group' involved in Operation HAMMERSLEY. Colonel Cameron provided additional supporting information and requested that the Minister reconsider his decision.

5. On 16 November 2017, Mr Phil Connole, Chief of Staff to Minister Tehan, wrote to Colonel Cameron explaining '*… the citation was conferred on the 8th Battalion for its service throughout its deployment to Vietnam. As the citation was conferred on the Battalion by the former Government of the Republic of Vietnam, it is not within the authority of the Australian Government to extend this to other units not named as either under the operation control of the Battalion or named by the former Government as assigned and attached to the Battalion.*' Mr Connole went on to state that Defence would not progress Colonel Cameron's application.

6. Colonel Cameron sought review of Mr Connole's decision in the Tribunal by way of an application dated 27 May 2019. Colonel Cameron provided further submissions to the Tribunal on 21 June, 1 July, 9 July, 14 July, 19 July, 5 August, 19 October and 12 December 2019, together with further submissions and comments on 2 and 7 January 2020.

7. On 11 June 2019, the Chair of the Tribunal wrote to the Secretary of the Department of Defence seeking a report on Mr Connole's decision. In doing so, the Tribunal sought the Defence view on the eligibility of the units covered by Colonel Cameron's application under both the citation applicable to 8RAR, and a further citation made by the Government of the Republic of Vietnam (South Vietnam) and set out in United States Department of the Army, General Order No. 8 (US-DAGO 8) of 19 March 1974, which promulgated the award of the Republic of Vietnam Cross of Gallantry with Palm, Unit Citation to '*Headquarters United States Military Assistance Command* (Vietnam) *and its subordinate units*'.

8. Defence provided a report on 2 September 2019 and a copy was provided to Colonel Cameron. Colonel Cameron provided comments on the report on 22 September 2019.

9. The Tribunal conducted a hearing on the matter on 29 October 2019. A further directions hearing was conducted on 18 December 2019 to consider Defence's progress in answering a number of questions placed on notice at the October hearing. Defence provided some additional material which has been shared with the applicant but remained unable to provide answers to questions first raised on 11 June 2019. The Tribunal decided that there was nothing to be gained from further delay.

The Republic of Vietnam Cross of Gallantry with Palm Unit Citation

10. The Republic of Vietnam Cross of Gallantry was an award conferred by the now-defunct Government of the Republic of Vietnam with various classes: Palm, Gold Star, Silver Star or Bronze Star. The class of the award reflected the level within the South Vietnamese military hierarchy at which the award was made. The Cross of Gallantry could be awarded to individuals or collectively to units as a unit citation. The demise of the Republic of Vietnam in 1975 closed this award. As Australians have been authorised recipients of this award, it remains a foreign award that is administered by the Australian Government through the Department of Defence. That administration extends to the determination of eligibility under historic citations made by the Government of the Republic of Vietnam. The Australian Government has no authority to amend those citations or to create new awards.

11. The Republic of Vietnam Cross of Gallantry is an award that generates considerable confusion from the number of names by which it is commonly known. In its manifestation as a unit citation, the award has frequently been labelled, amongst other descriptions, as a 'meritorious unit commendation' and 'presidential unit citation'. [1] The Tribunal is satisfied that, despite it being referenced by different labels, only one form of unit citation, and its

[1] The New Zealand Defence Force promulgates the award made to the 161st Battery, Royal New Zealand Artillery as 'The Presidential Unit Citation of the Cross of Gallantry with Palm Leaf'.

corresponding device, was ever available or conferred by the Government of the Republic of Vietnam. That citation was the Cross of Gallantry with Palm Unit Citation. At the hearing conducted on 29 October 2019, Mr Ashley Ekins, former Head of the Military History Section at the Australian War Memorial and co-author of two volumes of the Australian official history of the Vietnam War, agreed with this position.

12. In a 1969 booklet[2] published by the Government of the Republic of Vietnam to present and introduce all of the medals and decorations of the Republic of Vietnam Armed Forces, the Cross of Gallantry is described as being '*awarded or posthumously awarded to military personnel, civilians, and Armed Forces units and organisations which have accomplished deeds of valor or displayed heroic conduct while fighting the enemy…'*

13. It is apparent to the Tribunal that the Government of the Republic of Vietnam became increasingly more liberal in granting the award as a unit citation over the course of the Vietnam War. In its ultimate form, as set out in US-DAGO 8, the citation of US-MACV and its subordinate units by the Government of the Republic of Vietnam essentially sought to make all units that served in Vietnam eligible for the award.

14. During the years of the Vietnam War, Australian units were approved to be eligible for the award the Republic of Vietnam Cross of Gallantry with Palm Unit Citation as follows:

a. Australian Army Training Team Vietnam, for operations from 1 July 1962 to 31 October 1971;
b. 8th Battalion, Royal Australian Regiment, for operations from 28 November 1969 to 24 October 1970; and
c. No 2 Squadron, RAAF, for operations from 19 April 1967 to 15 July 1971.[3]

15. In 2008, eligibility for the award was approved for the strength of D Company, 6th Battalion, Royal Australian Regiment, for operations on 18 August 1966 (the Battle of Long Tan). This award was approved on the recommendation of the then Parliamentary Secretary for Defence Support after the identification of compelling evidence of an intention by the Government of the Republic of Vietnam to offer the award to D Company for its service in that battle.

16. In 2014, eligibility for the award was approved for elements of the 1st Battalion, Royal Australian Regiment battle group that served in Vietnam under command of the United States 173rd Airborne Brigade. This determination recognised that the award that was made by the Government of the Republic of Vietnam to the United States 173rd Airborne Brigade and promulgated under US-DAGO 51 of 1971, included the following Australian subordinate units of that Brigade:

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[2] Booklet, *Huy Chuong an Thoung Trong Quan-Luc Viet-nam Cong Hoa*, Government of the Republic of Vietnam, January 1969.

[3] No 2 Squadron RAAF was awarded the citation as it was a part of the US 35th Tactical Fighter Wing, which was the unit cited by the Government of the Republic of Vietnam.

a. 1st Battalion, the Royal Australian Regiment from 25 May 1965 to 31 May 1966;
b. 1 Armoured Personnel Carrier Troop Royal Australian Armoured Corps from 15 June 1965 to 31 March 1966;
c. 105th Field Battery, Royal Australian Artillery, from 14 September 1965 to 31 May 1966;
d. 3 Field Troop, Royal Australian Engineers, from 14 September 1965 to 31 March 1966;
e. 161 Reconnaissance Flight, Australian Army Aviation, from 14 September 1965 to 31 May 1966;
f. 1st Australian Logistic Support Company from 25 May 1965 to 31 March 1966; and
g. Battery Section, 4 Field Regiment Light Aid Detachment Royal Australian Electrical and Mechanical Engineers from 14 September 1965 to 31 March 1966.

17. In 2016, in recognition of the citation set out in US DAGO-8, eligibility for the award was approved on the recommendation of Defence for members of the following Australian units who served in Vietnam under the operational control of United States Military Assistance Command Vietnam (US-MACV). In a similar manner to the award made to the 1 RAR battle group, the determination recognised eligibility on the basis of the award made by the Government of the Republic of Vietnam to US-MACV and its subordinate units:

a. RAN Helicopter Flight Vietnam from 16 October 1967 to 8 June 1971;
b. RAN Clearance Diving Team Three for operations from 5 February 1967 to 5 May 1971;
c. No 9 Squadron, RAAF, for operations from June 1966 to December 1971; and
d. RAAF Transport Flight Vietnam/No 35 Squadron from August 1964 to February 1972.

18. On 20 June 2018, the Minister for Veterans' Affairs recommended that acceptance of the Republic of Vietnam Cross of Gallantry with Palm Unit Citation for 547 Signal Troop for operations from 13 June 1966 to 23 December 1971. That eligibility was determined by Defence as 547 Signal Troop operated under the control of the United States 303rd Radio Research Battalion which has been awarded the citation. The basis of the award to the 303rd Radio Research Battalion is not clear to the Tribunal but a paper prepared for Defence by Dr Michael B. Tyquin of the Army History Unit[4] suggests that the award was made under the Republic of Vietnam Citation to US-MACV.

[4] *Rutherford: Claim for Republic of Vietnam Cross of Gallantry with Palm Unit Citation*, Dr Michael B. Tyquin, Army History Unit, 14 December 2017.

19. In the absence of any formal advice, the Tribunal could only speculate as to why Defence has endorsed the eligibility of some specific units under the US-MACV citation but failed to recognise the eligibility of all Australian units who served in Vietnam as subordinate units to US-MACV.

20. With respect to Colonel Cameron's application, the key question for the Tribunal to consider was whether those units nominated by Colonel Cameron are eligible for the award of the Republic of Vietnam Cross of Gallantry with Palm Unit Citation.

Colonel Cameron's Application

21. Colonel Cameron's principal argument is that the three supporting units covered by his application were part of the 8RAR Group that conducted Operation HAMMERSLEY in 1970. Colonel Cameron is of the view that 8RAR has been recognised for that unit's service and sacrifice during Operation HAMMERSLEY, but the battalion's supporting units have not. His argument is that 8RAR received recognition from the Government of the Republic of Vietnam by the award of the Cross of Gallantry with Palm Unit Citation and that this award should be extended to supporting units that participated in the operation.

22. Colonel Cameron provided the Tribunal with material supporting the contributions made by the supporting units to the success of Operation HAMMERSLEY and the command relationships that were in place. He has also provided the Tribunal with his interpretation of the intent of the Government of the Republic of Vietnam and the role played by various Australian and United States representatives in raising recommendations for the award.

23. Although the 8RAR citation which was issued by the Government of the Republic of Vietnam is quite clear in describing the award as being for the Battalion's operations in Vietnam '*from 28 November 1968 through to the date of the award'* (24 October 1970)[5], Colonel Cameron has noted that the Government of the Republic of Vietnam also identified that *"their most remarkable military operations took place in the area of the Long Hai hills. The area is known as 'Minh Dam Secret Zone', a base area of the main force Communist units in Phuoc Tuy province."* The citation also includes the phrase '*the forces of the 8th Battalion, 1st Australian Task Force.'* Colonel Cameron is of the view that these extracts from the 8RAR citation suggest the award was made in recognition of service and sacrifice during Operation HAMMERSLEY and that the award should be extended to subordinate units.

24. The hearing in October 2019 highlighted some confusion regarding what was actually awarded to 8RAR. Colonel Cameron is of the view that while the Republic of Vietnam Cross of Gallantry with Palm Unit Citation may have been awarded to 8RAR for their tour of duty from 28 November 1968 to the date of the award, another separate 'Republic of Vietnam Meritorious Unit Commendation' was awarded to 8RAR under the same citation. The basis for Colonel Cameron's view that a separate commendation had been awarded to 8RAR is the

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[5] Official Order No. 409-D/77M/CL, Chief of Joint General Staff, Republic of Vietnam Armed Forces dated 24 October 1970.

frequency with which this term has been used over the years to describe the Republic of Vietnam Cross of Gallantry with Palm Unit Citation.

25. Colonel Cameron has also argued that the purpose of the Republic of Vietnam Cross of Gallantry being to recognise '*accomplished deeds of valor or displayed heroic conduct while fighting the enemy'* is evidence that 8RAR's recognition must have been for Operation HAMMERSLEY rather than for other aspects of the battalion's Vietnam tour of duty. At the October hearing, Colonel Cameron noted a number of published sources and references that suggest that 8RAR was awarded a unit citation specifically for Operation HAMMERSLEY. Colonel Cameron contended that the general and often repeated view that 8RAR was awarded a 'Cross of Gallantry' for Operation HAMMERSLEY has led members of those units that supported 8RAR in the operation to feel aggrieved by the absence of any recognition of their contribution to the success of that operation.

26. Colonel Cameron drew the attention of the Tribunal to the fact that the citation for 8RAR was raised prior to the end of the Battalion's tour of duty in Vietnam. Because the award preceded the actual end date of the Battalion's tour, Colonel Cameron contends that the citation could not have been awarded for the entire tour and so he has inferred that the award must have been made for Operation HAMMERSLEY.

27. Colonel Cameron believes that the award made to 8RAR comprises a Republic of Vietnam Cross of Gallantry with Palm Unit Citation awarded for Operation HAMMERSLEY and a separate 'Meritorious Unit Commendation' made under the same citation for the Battalion's tour of duty (to the extent completed at the time of the award). At the hearing, Colonel Cameron cited an Australian reference to 8RAR being presented a 'Meritorious Unit Commendation' as evidence that two distinct elements were contained within the award. Colonel Cameron has also found references to a 'Meritorious Unit Commendation' in Vietnamese correspondence leading to the award of the citation which has led him to believe that the Government of the Republic of Vietnam was intending to present an award similar in name and nature to the United States Meritorious Unit Commendation, but an award where the recipients would be entitled to wear the emblem (device) of the Cross of Gallantry with Palm.

28. At the hearing, Colonel Cameron concluded that the actions of the supporting units at Operation HAMMERSLEY were deserving of recognition. He proposed four avenues under which such recognition might be afforded. Firstly, he proposed that 1st Australian Task Force had made an administrative error by not including supporting arms in the proposal which led to the Government of the Republic of Vietnam's award and that this could be corrected. Secondly, he proposed that the Tribunal could conclude it was the intention of the Government of the Republic of Vietnam to recognise the contribution of supporting arms to Operation HAMMERSLEY under the citation made to 8RAR. Thirdly, he proposed that the bravery and sacrifice of supporting arms could be recognised by the award of the Australian Unit Citation for Gallantry and finally, he proposed that all units involved in Operation HAMMERSLEY including 8RAR could be awarded an Australian Unit Citation for Gallantry.

The Defence Position

29. Defence does not dispute the actions or the role of those units that participated in Operation HAMMERSLEY. Rather, the Defence position has been formulated by an examination of the citation documentation issued by the Government of the Republic of Vietnam to recognise 8RAR. In its submission to the Tribunal, Defence noted that the Republic of Vietnam Cross of Gallantry with Palm Unit Citation is not an Australian award and that the demise of the Republic of Vietnam means that the intention or otherwise of the Government of the Republic cannot be clarified. The Defence position is that there is no eligibility for the units identified by Colonel Cameron under the citation awarded to 8RAR.

30. Although Colonel Cameron has applied specifically for the citation awarded to 8RAR to be extended to supporting units engaged in Operation HAMMERSLEY, the Tribunal considered that a broader view of eligibility was appropriate given the history of this award. In its request for a Defence submission on the matter, the Tribunal specifically requested Defence to consider the eligibility of the units nominated by Colonel Cameron under the award made by the Government of the Republic of Vietnam to US-MACV and subordinate units promulgated under US-DAGO 8. The Defence submission of 2 September 2019 stated *'Defence are currently addressing eligibility against this General Order and further comment will not be made by Army until that work is completed'.*

31. At the October hearing, Brigadier Wade Stothart DSC, AM, CSC, representing Defence, outlined Australian Army research into other nations[6] acceptance of eligibility for units that served under US-MACV. He also indicated that Defence was about to seek advice from the United States Government as to whether the provisions of US-DAGO 8 were restricted to United States personnel only *'from an Army perspective'.* Brigadier Stothart did note that Australian Navy and Air Force elements that served in Vietnam have already received recognition under this award.

32. Brigadier Stothart summarised the Defence position by stating that research into the matter had not revealed any primary evidence that supported the notion that the award to 8RAR was made only for Operation HAMMERSLEY or that the citation was intended to include the units nominated by Colonel Cameron. Brigadier Stothart quoted a reference from 'Fighting to the Finish', the final volume of the official Australian history of the Vietnam War by Mr Ashley Ekins: '*… the South Vietnamese Government later awarded 8RAR a Unit Citation making special mention of operations against the Minh Dam base in the Long Hais*.' Brigadier Stothart emphasised that the reference to operations against the Minh Dam base was a 'special mention' contained within a broader citation.

[6] New Zealand, South Korea, Thailand, and the Philippines.

Expert witness Mr Ashley Ekins

33. Mr Ekins endorsed the view that the contribution of supporting units to Operation HAMMERSLEY were worthy of recognition. Mr Ekins described his choice of words when describing the Republic of Vietnam award to 8RAR as a 'generic term' for the citation. He stated that he is of the view that the variety of descriptions all refer to the same award i.e. the Republic of Vietnam Cross of Gallantry with Palm Unit Citation. Mr Ekins told the Tribunal that the terminology he had used in describing the award as '*a Meritorious Unit Commendation which included the Republic of Vietnam Cross of Gallantry with Palm Unit Citation*' was his attempt to 'get around' and a failed attempt to clarify the variety of terminology appearing in previous publications. Mr Ekins explained that his choice of words was not intended to convey that there were two elements to the award but merely to acknowledge the generic terms that are in common use.

34. Mr Ekins discussed his assessment of the citation. He is of the view that it certainly covers Operation HAMMERSLEY but that it also includes a generic inclusion of all the activities of the Australian Task Force in the Long Le district. He is of the view that the main thrust of the document deals with Operation HAMMERSLEY but acknowledged that the wording reflects 8RAR's tour of duty commencing from 28 November 1969 i.e. prior to Operation HAMMERSLEY.

Colonel Ben Bowd AM (Retd)

35. Colonel Bowd addressed the Tribunal at the October hearing and expressed his view of the extent of all-arms involvement and the intimacy and intensity of that support. He told the Tribunal that an award made to 8RAR for Operation HAMMERSLEY was disappointing to the members of those units that had not been recognised. He noted that *'the exclusivity of the award and the omission of those who were equally deserving, who faced the same risks, and who made significant contributions to Operation HAMMERSLEY over an extended and intensive period of time was unjustified'.*

Lieutenant Colonel George Hulse (Retd)

36. At the October hearing, Lieutenant Colonel George Hulse (Retd) (Colonel Hulse) briefed the Tribunal on the relationship between supporting units and 8RAR, focussing on the role of engineering units and the nature of command and control arrangements utilised in Vietnam. He described the integral nature of those relationships and arrangements in place for Operation HAMMERSLEY. Colonel Hulse also made the assertion that there was no aspect of 8RAR's general operations in Vietnam that did not include a contribution from engineers. Discussion around this aspect led to Defence accepting a question on notice as to whether the supporting units nominated by Colonel Cameron could be considered to be part of 8RAR for the duration of the Battalion's tour of duty, as identified by the Republic of Vietnam citation.

Role of the Tribunal in Review: merits review

37. The Tribunal is required under the *Defence Act 1903* (the Defence Act) to review a 'reviewable decision' on the merits. In this case, the reviewable decision is that of Mr Connole, Chief of Staff to Minister Tehan, made on 7 May 2017. The fundamental question considered by the Tribunal was whether the units nominated by Colonel Cameron are eligible for the Republic of Vietnam Cross of Gallantry with Palm Unit Citation. In undertaking this review, the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision. The facts, law and policy aspects of the decision are all considered afresh and a new decision is made.[7] The Tribunal reviews the decision, and not the reasons for the decision. In doing so, there is no legal onus of proof, and there is no presumption that the original decision was correct.[8] The Tribunal is bound to make what it regards as the 'correct or preferable' decision and must reach a decision that is legally and factually correct.

38. Under the Defence Act, the Tribunal is established with two functions. Colonel Cameron has applied under the Tribunal's 'review' function to review Mr Connole's decision to refuse to recommend extension of 8RAR's eligibility for the Republic of Vietnam Cross of Gallantry with Palm Unit Citation to A Squadron, 1 Armoured Regiment; B Squadron, 3 Cavalry Regiment; and 1 Field Squadron, Royal Australian Engineers. The Tribunal has a second 'inquiry' function under which the Government may refer general eligibility issues related to defence honours and awards for inquiry and recommendation. Such inquiries are conducted by the Tribunal under specific terms of reference. A common consideration under the Tribunal's 'inquiry' function is the integrity of the Australian Defence Honours and Awards system.

39. Although no consideration of honours and awards integrity is necessarily applied in the conduct of a review, it is important to note that the Republic of Vietnam Cross of Gallantry with Palm Unit Citation does not hold any place in the Australian honours and awards system. It is also noteworthy that in conducting this review, the Tribunal has not taken into consideration the integrity of the Republic of Vietnam's system of honours and awards.

40. With reference to Colonel Cameron's proposition that the Tribunal could consider the award of an Australian Unit Citation for Gallantry, it should be noted that this award is excluded from the list of honours and awards that fall within the Tribunal's jurisdiction for review.[9]

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7 Pearson, Linda, 'Merit Review Tribunals', in Creyke, Robin and McMillan, John, *Administrative Law – the Essentials*, AIAL 2002, p. 68.

8 *McDonald v Director-General of Social Security* (1984) 1 FCR 354.

9 Defence Regulation 2016, compilation No.2, 4 September 2018, Part 6, Sections 35 and 36.

What eligibility criteria must the Tribunal apply?

41. In considering Colonel Cameron's application, the Tribunal is bound by the eligibility criteria[10] for the claimed award that governed the making of the decision under review. In this case, being an award made by a foreign Government which no longer exists, no latitude exists for anything other than a strict literal interpretation of the citations that were issued by that Government.

Tribunal Consideration

42. The absence of dispute regarding the actions or the role of supporting units that participated in Operation HAMMERSLEY, combined with the nature of this foreign award, leaves the only issue for the Tribunal to consider being the eligibility of the units cited by Colonel Cameron as determined by those citations issued by the Government of the Republic of Vietnam.

43. The Tribunal accepted that recognition of units by the Government of the Republic of Vietnam has been confused by the terminology used to describe various presentations. The award made to 8RAR is a clear example where the award has frequently been referred to as a 'Meritorious Unit Commendation'. However, in all cases the award that has been presented is the Republic of Vietnam Cross of Gallantry with Palm Unit Citation, and authorised recipients are all entitled to wear the same corresponding emblem or device. Regardless of the nuances of possible intent raised by Colonel Cameron, there has only been one Republic of Vietnam Unit Citation awarded to 8RAR. Accordingly, the citation document issued by the Government of the Republic of Vietnam for that award is the only document under which eligibility for that particular award can be determined.

44. The Tribunal recognised three avenues under which the units nominated by Colonel Cameron could be eligible for the Republic of Vietnam Cross of Gallantry with Palm Unit Citation. The first two avenues are associated with the 8RAR citation. If, under the first avenue as suggested by Colonel Cameron, the citation was limited to recognising the actions of elements of the 1st Australian Task Force (both 8RAR and supporting units) for their service and sacrifice in the conduct of Operation HAMMERSLEY alone, an extension of eligibility to supporting units could be indicated.

45. The Tribunal is of the view that interpreting the scope of the 8RAR citation to include additional elements of the 1st Australian Task Force and to focus the award only for Operation Hammersley would be a significant departure from the actual citation that was issued by the Government of the Republic of Vietnam. Colonel Cameron has suggested that such an interpretation would better capture the intent of the Government of the Republic of Vietnam which he believes was compromised by Australian preferences at the time the award was being considered. The proposition that the citation may or may not have been drafted to accord with Australian preferences and sensitivities does not change the fact that the Government of the

[10] *Defence Act 1903*, S110VB(6).

Republic of Vietnam actually did accord with those preferences when the citation was issued. The Tribunal is of the view that even if the citation is regarded by some observers as being a 'erroneous' it still remains *the* citation.

46. The Defence submission also discussed three recent translations commissioned by Defence in response to a claim that the original translation for the citation was made in error. One of those recent translations, in one instance, made reference to *'8th Battalion/1st Tank Squadron of Royal Australian Army* (sic)*'*. Whilst appearing in the title and ribbon title of the translation, no mention of '1st Tank Squadron' appeared in the translation's narrative text. Subsequent translations did not discuss '1st Tank Squadron' (which did not appear on the 1ATF order of battle), nor, importantly, did it appear on the translation approved by the Sovereign, which consistently cited the '8th Battalion, 1st Australian Task Force'.

47. The Republic of Vietnam citation of 8RAR clearly covers a broad period of operations '*from 28 November 1969 to the present'* i.e. the date of the award - 24 October 1970.[11] These dates correspond with 8RAR's tour of duty in Vietnam at the time of the award. While the citation highlights the operations of 8RAR in the Phuoc Tuy province it also recognises the Battalion for its work with Vietnamese Regional Forces and Popular Forces in Long Le sub-sector. The citation even includes 8RAR's participation in civic action programs. While we may consider recognition for civic action programs to be outside the Government of the Republic of Vietnam's own guidelines for the award, this would be a matter entirely for the now-defunct Government of the Republic of Vietnam and is not an aspect that can be reviewed or amended by the Tribunal. The Tribunal concluded that the 8RAR citation is for that unit alone and was issued by the Government of the Republic of Vietnam to recognise the Battalion's tour of duty in Vietnam to the date of the award.

48. The second avenue considered by the Tribunal was whether the supporting units proposed by Colonel Cameron could be considered to be elements of 8RAR for the purposes of the citation as presented – in other words, could those units be considered to be part of 8RAR from 28 November 1969 through to the date of the award? Defence was asked to consider this avenue in a question placed on notice at the October hearing.

49. Defence has provided the advice that the sub-units nominated by Colonel Cameron were not permanently assigned to 8RAR for the duration of the Battalion's tour. In response to this advice, Colonel Cameron has re-stated his opinion that the sub-units were under command of 8RAR for Operation HAMMERSLEY. The command relationships and the contribution of the supporting units to the success of Operation HAMMERSLEY is not in dispute. However, as the Tribunal accepts that the Republic of Vietnam Cross of Gallantry with Palm Unit Citation was awarded to 8RAR for the entirety of that unit's tour to the date of the award, those supporting units assigned to 8RAR specifically for Operation

[11] Official Order No 409-D/77M/CL, Chief of Joint General Staff, Republic of Vietnam Armed Forces, 24 October 1970.

HAMMERSLEY and not permanently assigned to the Battalion for its tour of duty cannot be considered to be part of the Battalion for the purposes of the award.

50. The final avenue considered by the Tribunal was whether the units cited by Colonel Cameron are eligible for the award as subordinate units to US-MACV. Defence was specifically requested to consider the eligibility of the units under this approach in a letter from the Chair of the Tribunal to the Secretary of the Department of Defence dated 11 June 2019. Defence was also given this same question on notice at the October hearing. Despite having accepted the eligibility of RAN Helicopter Flight Vietnam, RAN Clearance Diving Team Three, No. 9 Squadron RAAF, 547 Signal Troop and RAAF Transport Flight Vietnam/No 35 Squadron under the US-MACV citation, Defence has not been able to provide a position on this avenue.

51. Notwithstanding the absence of Defence advice, the Tribunal considers the citation awarded to US-MACV as promulgated under US-DAGO 8 to be very clear. The Tribunal does not accept that any United States Department of the Army General Order necessarily has any directive authority over the Australian Defence Force. In other words, US-DAGO 8 is not regarded as the authority for any award. The Tribunal is of the view that the citation document issued by the Government of the Republic of Vietnam is the authority for the award made to US-MACV. While not holding any weight in our consideration, the Tribunal noted that Defence has relied upon US-DAGO 51 as being an accurate statement of the citation made to US 173rd Airborne Brigade that has since been extended to the 1RAR battle group.

52. Unfortunately for the integrity of this award, it is apparent to the Tribunal that the Government of the Republic of Vietnam became increasingly liberal in granting the award over the course of the Vietnam War. Regardless of the consequences of that shift in approach, the Government of the Republic of Vietnam sought to recognise US-MACV and all subordinate units by the award of the Republic of Vietnam Cross of Gallantry with Palm Unit Citation.

53. In 2016, some Australian units were recognised by their eligibility for the award as subordinate units to US-MACV. This eligibility was extended on the advice of Defence. The Tribunal observed that although no determination has been made which covers the units nominated by Colonel Cameron, these units were also subordinate units of US-MACV, in that they were under the operational control of Headquarters II Field Force Vietnam, which was a subordinate unit of US-MACV.

54. At the directions hearing in December 2019, Colonel Cameron addressed the Tribunal regarding the eligibility of Australian Army units under the US-MACV citation. Colonel Cameron strongly argued that during the Vietnam War, the Republic of Vietnam Cross of Gallantry with Palm Unit Citation was viewed as a ‘substitute’ award in light of the limitations of the Australian quota system which restricted access to Australian honours and awards. Being used in this manner, Colonel Cameron believes the award holds a significance to Australian units beyond that implied by the US-MACV citation.

55. Given his views on the integrity of this South Vietnamese award, Colonel Cameron did not wish his application for the review of Mr Connole's decision to lead to an award being made to units that he had nominated on the basis of the US-MACV citation. The Tribunal has respected this request.

DECISION

56. The Tribunal decided to affirm the decision of the Chief of Staff to the Minister for Defence Personnel that the following units are not eligible for the Republic of Vietnam Cross of Gallantry with Palm Unit Citation awarded to 8th Battalion, the Royal Australian Regiment:

- A Squadron, 1 Armoured Regiment;
- B Squadron, 3 Cavalry Regiment; and
- 1 Field Squadron, Royal Australian Engineers.