



Australian Government

Defence Honours and Awards Appeals Tribunal

Collins and the Department of Defence [2020] DHAAT 16 (10 September 2020)

File Number 2020/002

Re **Mr Peter Collins**
Applicant

And **Department of Defence**
Respondent

Tribunal Mr M. Sullivan AO (Presiding Member)
Ms A. Trengove

Hearing Date 10 July 2020

Date of Decision 10 September 2020

Appearances Mr Peter Collins (by telephone)
Ms Jo Callaghan, Ms Belinda Turley,
Directorate of Honours and Awards, Department of Defence

DECISION

The Tribunal affirms the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Peter Collins is not eligible for the award of the Republic of Vietnam Campaign Medal.

CATCHWORDS

FOREIGN AWARD – Republic of Vietnam Campaign Medal – exceptions for service less than the required period – whether psychiatric illness recognised after discharge is ‘wounded in action’ – Tribunal bound by criteria

LEGISLATION

Defence Act 1903 – Part VIIIIC – Sections 110T, 110V(1), 110VB(2), 110VB(6)
Joint General Staff of the Republic of Vietnam Armed Forces Directive Pertaining to awarding of Campaign Medal HT. 655-430 – dated 1 September 1965 and as amended 22 March 1966
Military Board Instruction 102-4 Medals – The Vietnamese Campaign Medal – dated 23 December 1968

REASONS FOR DECISION

Introduction

1. The Applicant, Mr Peter Thomas Collins, seeks review of the decision by the Directorate of Honours and Awards of the Department of Defence (the Directorate) dated 27 March 2019 that he is not eligible for the award of Republic of Vietnam Campaign Medal (RVCM). Mr Collins lodged an application for the award of the RVCM to the Directorate on 7 January 2019. His application was based on his service in Vietnam from 7 May 1969 to 10 September 1969.

2. The Directorate determined that Mr Collins was not eligible for the claimed award because he did not meet the eligibility criteria of serving a minimum of 181 days in Vietnam. Further, the Directorate stated that there was no evidence to show that he had been wounded in action; captured and later released; or escaped; to meet the criteria if the 181 days was not served.¹

3. On 20 January 2020, Mr Collins applied to the Tribunal for a review of the Directorate's decision.² He contends that upon his interpretation of the eligibility for the medal, special and extenuating circumstances apply and he should be awarded the RVCM.

4. In considering any application for review the Tribunal is bound by the relevant eligibility criteria for a particular honour or award: s110VB(6) of the *Defence Act 1903*. In that regard, the Tribunal has no discretion.

Service History

5. On 4 October 1967 Mr Collins enlisted in the Australian Regular Army Supplement (National Service) (ARA(NS)) with a two-year enlistment period. Following recruit training he was posted to the 6th Battalion, the Royal Australian Regiment (6 RAR). On 7 May 1969, Mr Collins departed Australia for Saigon, Vietnam arriving on the same day. He departed Vietnam on 10 September 1969. In total Mr Collins served 127 days outside of Australia, all of which were in Vietnam, where he served as a Private soldier.

6. On 2 October 1969, Mr Collins discharged from the ARA(NS). His discharge certificate states that the reason was 'having completed the prescribed period of service in the ARA(NS)'.³

7. For his service Mr Collins was awarded the:

- Australian Active Service Medal 1945-75 with Clasp 'VIETNAM';
- Vietnam Medal;
- Australian Defence Medal;
- Anniversary of National Service 1951-1972 Medal;
- Return from Active Service Badge; and
- Infantry Combat Badge.

¹ Letter, DH&A 1733569, Mr M Jordan to Mr Collins, dated 27 March 2019.

² Application for Review of Decision by Mr Collins to the Tribunal dated 20 January 2019.

³ Discharge certificate, service record, P.T. Collins, 1733569.

Eligibility Criteria for the Republic of Vietnam Campaign Medal

8. In 1964 the Government of the Republic of Vietnam established a campaign medal known in Australia as the Republic of Vietnam Campaign Medal. This was offered to the Australian Government in May 1966 to recognise Australian service personnel who had served in Vietnam. The offer was accepted.

9. The RVCM remains a foreign medal to this day, notwithstanding the Government of the Republic of Vietnam ceased to exist from 1975.

10. The RVCM is additional to the Australian campaign medals which have been issued to recognise service in Vietnam. The RVCM is also significantly different to the Vietnam Medal (awarded to Australian and New Zealand forces), in that it required 181 days service, rather than the much shorter period of service required for eligibility for the Vietnam Medal.

11. As a foreign award, conditions for the award of the RVCM were laid down by a foreign government which were later accepted by the Australian Government at the time. It was up to the Australian authorities to determine which individuals were eligible for the award.

12. The original Directive by the Chief of Joint General Staff of the Republic of Vietnam Armed Forces which related to the RVCM for foreign military forces was dated 1 September 1965.⁴ It was later amended on 22 March 1966. In this decision and reasons, it will be referred to as the 'original Directive, as amended'.

Military Board Instruction 102-4 dated 23 December 1968

13. The instrument by which the criteria were promulgated for Army use in Australia, was the Military Board Instruction 102-4 dated 23 December 1968. This set out qualifying conditions as:

To qualify for the award a member must be allotted for 'Special Service' in Vietnam as defined by MBI 216-1, and one of the following:

- a. Must serve in Vietnam for a minimum period, either continuous or aggregated, of 181 days from 31 Jul 62 inclusive to a future date,*
- b. Have served in Vietnam for a period of less than 181 days from 31 Jul 62 inclusive to a future date if:*
 - (1) Killed on active service.*
 - (2) Wounded in action (i.e. classified as a Battle Casualty in a NOTICAS signal vide MBI 38-1).*
 - (3) Captured and later released or escaped.⁵*

14. The Tribunal refers to the attachment at Annex A to this decisions and reasons. This sets out the relevant articles of the original Directive by the Chief of Joint General Staff, as amended, of 22 March 1966.⁶ Further, it sets out the history as to how the Military Board

⁴ Joint General Staff of the Republic of Vietnam Armed Forces *Directive, Pertaining to awarding of Campaign Medal HT. 655-430* – dated 1 September 1965

⁵ Military Board Instruction 102-4 *Medals – the Vietnamese Campaign Medal* - dated 23 December 1968

⁶ Joint General Staff of the Republic of Vietnam Armed Forces *Directive, Pertaining to awarding of Campaign Medal HT. 655-430* – dated 1 September 1965 as amended 22 March 1966.

Instruction was instrumented and promulgated in Australia and the proceeding Memorandum of Secretary of Defence of 16 September 1966.⁷ Annex A also details the two Inquiries conducted by the Tribunal in relation to the RVCN in 2014⁸ and 2015.⁹ Mr Collins made a submission to the first Inquiry in 2014 where he sought to have the qualifying period shortened to accommodate the circumstances of National Servicemen of his intake (being the 10th Intake).¹⁰ Finally, Annex A sets out advice from the Australian Government Solicitor (AGS)¹¹ concerning whether there is any power to amend the eligibility criteria to RVCN requested by the Tribunal in second Inquiry conducted in 2015.

Mr Collins' Submission

15. Mr Collins provided a detailed submission and oral evidence at hearing.

16. Mr Collins stated that he accepts that he does not have the 181 days service in Vietnam, however, he stated that in his case there are special and extenuating circumstances why he should be awarded the RVCN.

17. At hearing, Mr Collins confirmed that he was seeking due recognition for his service in South Vietnam in the award of the RVCN. He stated as a young man, he had been called up and he had confronted the enemy a war zone. He stated that he would have likely served the remaining 53 days, thus qualifying him to the medal if he had been given the opportunity. However, as a National Serviceman he was not given that opportunity. Further, he was not told of the award or the criteria attached to it at the time.

18. Noting the number of National Servicemen and their allotted length of service, Mr Collins expressed his disappointment that Australian government of the day did not approach the then South Vietnamese government for a change in the time requirement to be served. Mr Collins submitted that if it had been lessened it would have led to fairer outcomes and accommodated for those, like him, who provided National Service. As a matter of government policy, he questioned why this unfairness was still allowed to continue.

19. Mr Collins said that twelve years after he came home from the Vietnam War he had PTSD and had suffered for his service, which had only been recognised by the Australian Vietnam Medal and not the RVCN.

Contended Interpretation

20. Mr Collins accepts that the Australian Government does not have the legal ability to change the criteria for the RVCN noting that the government of South Vietnam no longer exists. However, he does contend that the wording of the South Vietnamese original Directive by the Chief of Joint General Staff and subsequent Order Number 183 by higher

⁷ Memorandum of Secretary of Defence of 16 September 1966.

⁸ Defence Honours and Awards Appeals Tribunal, *Report of the Inquiry into eligibility for the Republic of Vietnam Campaign Medal*, Canberra, 2014.

⁹ *Report of the Inquiry into the feasibility of amending the eligibility criteria for the Republic of Vietnam Campaign Medal*, Defence Honours and Awards Appeals Tribunal, Canberra, 2015.

¹⁰ DH&A/IN/2013/125 dated 28 May 2013.

¹¹ Australian Government Solicitor legal advice to the Tribunal dated 3 February 2015, Re Power to amend the eligibility criteria for the Republic of Vietnam Campaign Medal.

ranking Lieutenant General on 31 August 1966,¹² provides an avenue for the Tribunal to apply discretion to his favour in determining the eligibility criteria.

21. In particular, Mr Collins drew the Tribunal's attention to Article 3 of the Vietnamese Original directive by the Chief of Joint General Staff (a Major General), as amended,¹³ which states that foreign authorities will determine eligibility of their personnel for the RVC. Article 3, as amended is reproduced below in full:

Article 3: Foreign military personnel serving in South Vietnam for six months during wartime and those serving outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF for six months in their struggle against an armed enemy will also be eligible for the award of the Campaign medal

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

22. Mr Collins stated that Article 3 indicates that the intention of the Government of the Republic of Vietnam was for the Australian Government to determine eligibility for their own personnel, which he says could be read to include special or extenuating circumstances.

23. Further to this argument, Mr Collins said that Article 2 of the Order Number 183 (made by a Vietnamese Lieutenant General) on 31 August 1966¹⁴ provided the Australian Military a measure of discretion in determining the eligibility criteria, without recourse to the South Vietnamese officials. Article 2 relevantly states:

Article 2: Eligibility of individuals for the award will be determined by Australian authorities and will be recorded in the personnel record of eligible personnel in accordance with procedures currently being applied by Royal Australian Forces.....

24. Mr Collins stated that these aforementioned Articles gave the Australian Military discretion as to how it would determine those who were eligible for the RVC. He further stated that support for the discretion given to the Australian government is highlighted in the AGS advice,¹⁵ which states that there was a measure of discretion in interpreting and applying the criteria to individuals. Mr Collins emphasised that the key word in that the AGS advice is the word 'discretion'. He said that discretion ought to have been more broadly applied in the formulation of the Military Board Instruction at the time and can and should be applied by the Tribunal now. He urged against a 'black letter interpretation' of the criteria.

¹² Republic of Vietnam Orders Nr: 183/TTM/QD/CDBT dated 31 August 1966.

¹³ Joint General Staff of the Republic of Vietnam Armed Forces *Directive, Pertaining to awarding of Campaign Medal HT. 655-430* – dated 1 September 1965 as amended on 22 March 1966 under cover of *Defence Memorandum* dated 16 September 1966.

¹⁴ Republic of Vietnam Orders Nr: 183/TTM/QD/CDBT dated 31 August 1966.

¹⁵ Australian Government Solicitor legal advice to the Tribunal dated 3 February 2015, paragraph 16.

Wounded in action

25. Mr Collins questioned, therefore, why the Military Board Instruction went onto more narrowly construe 'wounded in action' than the original Directive. Article 2, in the original Directive states 'WIA (wounded in action)' '... must take place during the war' as opposed to '*Wounded in action (i.e. classified as a Battle Casualty in a NOTICAS signal vide MBI 38-1)*' in the Military Board Instruction. Likewise, the Memorandum of Secretary of Defence of 16 September 1966, stipulates 'wounded in action' as well as 'evacuated'.

26. Mr Collins queried why the Australian Military Board Instruction and Memorandum are more proscriptive, when, in his opinion, fairness would have dictated or more lenient interpretation.

27. Mr Collins accepted that he was not a 'battle casualty' and nor was he 'evacuated'. He states that the term 'wounded in action' could and should be construed to incorporate his Post-Traumatic Stress Disorder (PTSD) which was caused by his service in Vietnam but did not manifest itself later until he had left the theatre of war.

Qualifying service – time spent in Australia?

28. Alternatively, or in addition to, Mr Collins contends that his time spent training in Australia prior to deploying to Vietnam should be counted as part of qualifying service for the RVCVM pursuant to Article 3 of the original Directive, as amended. He states that his intense training in tropical jungles in North Queensland was done to simulate the terrain and climate of South Vietnam. His training was solely for effective defence of South Vietnam and that this should be counted as part of the 181 days service for Vietnam required.

The Defence Submission

29. In its submission, Defence referred to Mr Collins' Certificate of Discharge, confirming that he had 127 days service outside Australia. Of this, 127 days were eligible service towards the claimed award, thus falling short of the 181 days required.

30. Defence referred to the eligibility criteria and submitted that there was no discretion to consider 'special circumstances' beyond those stipulated in the Military Board Instruction. As a matter of interpretation, Defence stated it is for the Australian authorities determine the RVCVM, based on the eligibility criteria as stipulated by the original Directive, as amended, and as set out in the Australian Military Board Instruction.

31. It was acknowledged that wording of the Military Board Instruction and that exceptions to the 181- day rule is restrictive and narrow. Defence also conceded that the operation of the criteria was particularly narrow in the case of National Servicemen, who in many cases did not serve beyond 181 days in Vietnam.

32. Further, the eligibility criteria, based on the original Directive, was worded in a time before more modern-day knowledge of PTSD and mental illnesses generally, which often have their trauma stressors in war but onset thereafter.

33. In relation to the term 'wounded in action', Defence submitted there had been instances of servicemen who had nervous breakdowns during their Vietnam service and had been duly evacuated. Defence explained that these cases were within the eligibility criteria.

However, a nervous breakdown or PTSD which manifested itself out of ‘the action’, was not within the scope of ‘wounded in action’ and nor could be ‘classified as a battle casualty’.

34. Defence submitted that Mr Collins’ Army medical records do not record any PTSD or any medical condition recorded at the time of his service. For this reason, Defence submitted that in Mr Collins could not be considered ‘*Wounded in action (i.e. classified as a Battle Casualty in a NOTICAS signal vide MBI 38-1)*’.

35. In relation to Mr Collins’ contention that his preparatory training in Australia to simulate conditions in South Vietnam should be considered as part of the 181 days qualifying service, this was refuted by Defence. In Defence’s submission, any service in Australia did not meet the requirement of *those serving outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF*.

The Issues

36. The issues for the Tribunal are:

- i. what are the qualifying criteria for the RVCM
- ii. does Mr Collins satisfy the 181 day requirement for the RVCM
- iii. does the ‘wounded in action’ exception to the requirement of 181 days service in Vietnam apply to persons whose injury or illness is not the cause of their early return from Vietnam
- iv. does Mr Collins satisfy the exception to the 181- day requirement
- v. does Mr Collins’ service in Vietnam meet the qualifying criteria for the RVCM
- vi. has the Tribunal any discretion to award the RVCM to Mr Collins if he does not meet the 181 days of qualifying service or the exceptions set out in the Military Board Instruction which applies the Directive as amended.

The Qualifying Criteria for the RVCM

37. The Tribunal determines that the qualifying criteria as those laid out in the Military Board Instruction as set out at paragraph 13 above. It is the Australian Military Board Instruction which is the relevant Australian instrument to be applied under Australian law. However, the original Directive may be drawn upon to assist in interpreting the Military Board Instruction if the Instruction's provisions are unclear or ambiguous.

38. The general qualifying criterion for the RVCM for Australian servicemen as in the Military Board Instruction at paragraph (a) is a minimum of 181 days of service in Vietnam. However, as it is common ground that Mr Collins was only in Vietnam for a total of 127 days, he would still be eligible for the RVCM if he satisfied one of the three exceptions in paragraph (b) of the Military Board Instruction.

the 181-day requirement.

39. It is agreed Mr Collins does not satisfy the 181-day requirement.

40. The Tribunal went onto to consider Mr Collins' contention that his preparatory training in Australia to simulate conditions in South Vietnam should be considered as part of the 181 days. The Tribunal finds that his service in Australia did not meet the requirement of service *in Vietnam* in the Military Board Instruction or in the original Directive of *those serving outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF*. Put simply, he was not contributing combat support but rather training to do so. This could not fall within the criteria.

41. The Tribunal considered Mr Collins' contention at hearing that he would have, if given the opportunity served longer than his 127 days in Vietnam. The Tribunal understands that National Servicemen were returned to Australia to arrive in the command from which they were to be discharged not less than four weeks before the due date of discharge. There is no evidence that Mr Collins was ever offered the opportunity to extend his National Service or informed of the same. As to whether Mr Collins would have taken up any offer however is speculative. It remains though, a fact that Mr Collins did not serve the requisite 181 days in Vietnam.

Interpretation – whether discretion can be applied to the exceptions

42. As a matter of interpretation, Mr Collins has urged the Tribunal to rely upon the original Directive, as amended and the subsequent Order number 183, which in his interpretation, gives greater scope for discretion as opposed to the arguably more narrowly worded Australian Military Board Instruction.

43. The Tribunal disagreed. As stated, it is the Australian Military Board Instruction which is the criteria to which the Tribunal is obliged to follow. The original Directive, as amended and the Order Number 183 provide genesis but they are not Australian law.

44. Order 183 is an order made by a Lieutenant General in the South Vietnamese Army. It provides context but cannot be read on its own as urged by Mr Collins. That part of the Order which refers in Article 2 to *Eligibility of individuals for the award will be determined by Australian authorities*, is not an avenue for interpretation at large. Similarly, Article 3 of the original Directive, as amended, provides: *foreign authorities will determine eligibility of their personnel for this award*. This is also not an avenue for the award to be given to other individuals, should the Australian authorities see fit in individual circumstances.

45. Mr Collins was neither killed in action nor captured, so the issue is whether he was *wounded in action* (i.e. classified as a *Battle Casualty in a NOTICAS signal vide MBI 38-1*). as contemplated by the Military Board Instruction.

46. 'Wounded in Action' i.e. classified as a Battle Casualty

47. There is no doubt that Mr Collins' chronic PTSD condition was principally caused by his military employment in Vietnam, especially his involvement in distressing and life-threatening combat situations. Dr Janis Carter, Psychiatrist, puts date of onset as 'during his service in Vietnam'.¹⁶ Mr Collins gave evidence at the hearing that he did not raise his PTSD

¹⁶ Report of Dr Janis Carter, dated 21 February 2006

symptoms at the time of his Vietnam service because he did not know himself until about 12 years later and after ‘a lot of damage had been done’.

48. The Tribunal confirmed from Mr Collins’ service medical records that he was discharged ‘FE’ (fully effective – medical/psychological).¹⁷ He also accepts that his records do not contain evidence that he experienced medical or psychological issues arising from his Vietnam service. It is thus unclear when Mr Collins’ PTSD symptoms first became evident. Nevertheless, they were not recognised as PTSD until some years after his return from Vietnam and his discharge from the Army. As a result, there was no possibility that his PTSD could have been recorded on his medical records at the time. Nor could he have been evacuated from Vietnam because of it. This may suggest some deficiencies in the criteria set 50 years ago when instituting the RVCМ which would be avoided today. However, we are not in a position to change those criteria.

49. The Tribunal notes the AGS advice states that ‘a measure of discretion interpreting and applying the criteria (e.g. to determine whether a person was ‘wounded’ in action). However it is clear from the wording and the context of both the Military Board Instruction and the September 1965 Directive issued by the Chief of the Joint General Staff of the Republic of Vietnam Armed Forces that for the ‘wounded in action’ exception for the 181 day requirement to apply, the injury or illness must have occurred and been manifested while in Vietnam. Furthermore it must also have been the cause for the soldier’s evacuation before serving 181 days in Vietnam.

50. On the evidence therefore before us, we are satisfied that Mr Collins’ return to Australia leaving Vietnam on 10 September 1969 was not due to any illness or injury, but rather due to the normal preparations for discharge from National Service. He was not evacuated because of his PTSD, nor was it cause for any early return from Vietnam. He could not therefore, be classified as being ‘wounded in action’ as contemplated by the Military Board Instruction.

No Broad Discretion to Award the RVCМ

51. As stated above, the Tribunal is bound by the eligibility criteria as set out in the Military Board Instruction.

52. The Tribunal then considered whether that Instruction provides any basis to award the medal on discretionary grounds. The Tribunal finds there is no broad discretion to award the RVCМ when the circumstances are ‘close to’, but do not fall within the exceptions.

53. The AGS advice makes it plain that the Australian authorities were conferred the power to determine if their personnel met the criteria as established by the then South Vietnamese Government. The advice states that while this allows the Australian Government a ‘measure of discretion’ in interpreting and applying the criteria, it does not extend to amending the criteria. ‘Close to’ will not be sufficient to fall within the exceptions.

54. For these reasons the Tribunal could not consider Mr Collins’ PTSD condition, his service within Australia nor his limited tenure as a National Serviceman to fall within any of the exceptions to the eligibility criteria.

Finding – Mr Collins is not Entitled to the RVCМ

¹⁷ Australian Defence Forces, Report of Final Medical Board, 21 October 1969.

55. Mr Collins' service in Vietnam does not meet either the minimum 181 days service in Vietnam nor the exceptions in the qualifying criteria for the RVCМ.

56. Despite the highly respected contribution of Mr Collins' in Vietnam and the significant adverse consequences to his mental health in the intervening years, it is not within the power of the Tribunal to award him the RVCМ as he does not meet the criteria set out in the relevant instrument, in this case the Military Board Instruction.

57. The Tribunal considered Mr Collins' submission, in effect, seeks a change to the award's eligibility criteria, particularly as a matter of policy pertaining to National Servicemen. In September 2015, the Australian Government accepted that it does not have the legal authority to amend the eligibility criteria for the claimed award, after the conduct and the recommendations from the two Inquiries conducted by the Tribunal.¹⁸ While it is open to the Tribunal to make recommendations in the course of its decision report,¹⁹ it considered that the previous Inquiries into the claimed award were both comprehensive and exhaustive. In particular, the Tribunal was satisfied that it had previously adequately canvassed, through the earlier Inquiries, issues pertaining to National Servicemen in regard to eligibility for the claimed award.

58. Nevertheless, we acknowledge Mr Collins' significant commitment and contribution through his service as a National Serviceman in Vietnam.

DECISION

59. The Tribunal affirms the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Peter Collins is not eligible for the award of the Republic of Vietnam Campaign Medal.

¹⁸ Defence Honours and Awards Appeals Tribunal, *Report of the Inquiry into eligibility for the Republic of Vietnam Campaign Medal*, Canberra, 2014, and *Report of the Inquiry into the feasibility of amending the eligibility criteria for the Republic of Vietnam Campaign Medal*, Defence Honours and Awards Appeals Tribunal, Canberra, 2015.

¹⁹ Per s 110VB(3) of the *Defence Act 1903*

Attachment A

‘the original Directive, as amended’

Joint General Staff of the Republic of Vietnam Armed Forces Directive, Pertaining to awarding of Campaign Medal HT. 655-430 – dated 1 September 1965

In September 1965, the Joint General Staff of the Republic of Vietnam issued a Directive setting out the eligibility for the medal, as follows:

Eligibilities

Article 1: *All military personnel of the [Republic of Vietnam Armed Forces] (RVNAF) who have 12 months service in the field during wartime, may claim the Campaign Medal award.*

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

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

The above anticipated cases must take place during the war.

Article 3²⁰: *Foreign military personnel serving in South Vietnam for six months during wartime and those serving outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF for six months in their struggle against an armed enemy will also be eligible for the award of the Campaign medal*

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

(as amended 22 March 1996)

Articles 4 and 5: *These articles describe how the medals were to be awarded to RVNAF personnel.*

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

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

²⁰ As amended on 22 March 1966 under cover of *Defence Memorandum* dated 16 September 1966

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

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

....

Awarding of the RVCN to Australian servicemen

In May 1966, the Government of the Republic of Vietnam raised the possibility of awarding the RVCN to Australian servicemen. On 24 June 1966, Her Majesty The Queen granted unrestricted approval for members of the Australian Armed Forces to accept and wear the RVCN.

The Department of Defence and the three services promulgated the conditions for the awarding of the RVCN. On 16 September 1966, the Secretary of the Department of Defence forwarded a memorandum to the Secretaries of the Departments of the Navy, Army and Air setting out the criteria for the award.

Memorandum of Secretary of Defence of 16 September 1966

In this Memorandum, the 22 March 1966 amendment to the original Directive is evidenced.

The criteria set out in the Memorandum are based on and largely reflected those specified by the Directive of 1 September 1965 with the 22 March 1966 amendment.

In that memorandum, the Secretary stated that conditions for the grant of the award to Australian servicemen, 'which are in line with those laid down by the United States authorities', were as follows:

- (a) Special service – as defined by the *Repatriation (Special Overseas Service) Act 1962* – for a minimum of six months duration, either continuous or aggregated, in Vietnam with retrospective effect to 31st July 1962.
- (b) 'Special service' in Vietnam of less than six months duration since 31st July 1962 if
 - (1) killed on active service or wounded in action and evacuated,
 - (2) captured and later released or escaped.²¹

Military Board Instruction 102-4 dated 23 December 1968

The instrument by which the criteria were promulgated for Army use was Military Board Instruction 102-4 dated 23 December 1968.³ This set out qualifying conditions as:

To qualify for the award a member must be allotted for 'Special Service' in Vietnam as defined by MBI 216-1, and one of the following:

- c. Must serve in Vietnam for a minimum period, either continuous or aggregated, of 181 days from 31 Jul 62 inclusive to a future date,*

²¹ Ibid.

d. *Have served in Vietnam for a period of less than 181 days from 31 Jul 62 inclusive to a future date if:*

- (1) *Killed on active service.*
- (2) **Wounded in action** (i.e. classified as a Battle Casualty in a NOTICAS signal vide MBI 38-1).
- (3) *Captured and later released or escaped.*

Tribunal Inquiries in relation to the Award (criteria unchanged)

The Terms of Reference for the first inquiry,²² completed in March 2014, directed the Tribunal to inquire and report on:

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

The Inquiry addressed a range of submissions relating to the administration of the RVCM over time. Among other recommendations, on completion of the Inquiry, the Tribunal recommended that no action be taken by the Australian Government to change the RVCM's eligibility criteria.

Following consideration of the Tribunal's Report, the Government directed the Tribunal to undertake a subsequent Inquiry²³ in 2015 to determine:

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

After consideration of submissions and legal advice from the Australian Government Solicitor, set out below, the Tribunal recommended that the eligibility criteria for the RVCM not be amended because the Australian Government does not have the legal authority to do so. This recommendation was subsequently accepted by Government in September 2015.

Australian Government Solicitor Legal Advice, dated 3 February 2015

This advice concerned whether the Australian Government had power to amend the eligibility criteria for the Republic of Vietnam Campaign Medal.

The advice considered the effect of the Directive of the Republic of Vietnam 1 September 1965 as amended on 22 March 1966. The advice considered whether the Australian

²² *Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards March 2014*

²³ *Inquiry into the feasibility of amending the eligibility criteria for the Republic of Vietnam Campaign Medal 2015*

Government had any power to change the eligibility criteria, noting that Article 3, as amended in 22 March 1966 provides for foreign authorities to determine the eligibility of their personnel for the award.

The AGS relevantly stated at paragraph 16 of that advice:

We do not think this could be considered a power to change the eligibility criteria for the RVCM. In our view, the power conferred on foreign authorities by Article 3 is a power to determine which of their personnel meets the criteria established by the Republic of Vietnam. While this allows the Australian Government (and other governments) a measure of discretion in interpreting and applying the criteria (eg, to determine whether a person is 'wounded' in action), we do not think it can be said to extend to actually amending those criteria.

The AGS went onto say that support for this view is borne out by the amendment to Article 3 which had been requested by the Government of the United States. The AGS explains that it would not have been necessary for the United States to request the Government of the Republic of Vietnam to amend the criteria, if the power of the United States to determine the eligibility of individuals extended to amending the eligibility criteria themselves.

Finally, the AGS that he was not aware of any other legal principle that would result in the Australian Government having power to amend the eligibility criteria for the RVCM given the Government of the Republic of Vietnam ceases now to exist. They were the only body who had the power to do so, and now there is not any body who has the power to amend the criteria.