



## Australian Government

### Defence Honours and Awards Appeals Tribunal

## Walker and the Department of Defence [2023] DHAAT 2 (22 February 2023)

File Number 2022/009

Re **Mr Murray Walker**  
Applicant

And **The Department of Defence**  
Respondent

**Tribunal** Ms Anne Trengove (Presiding Member)  
Air Commodore Anthony Grady AM (Retd)  
Major General Mark Kelly AO DSC (Retd)

**Appearances** Mr Murray Walker, Applicant  
Colonel John Kemp DSC AM (Retd), for the Applicant

Air Vice-Marshal John Quaife AM, Historical Honours and  
Awards Reviewing Officer, Department of Defence,  
for the Respondent

**Hearing Date** 5 December 2022

### DECISION

On 22 February 2023, the Tribunal decided to recommend to the Minister that:

- the decision of the Chief of Army, Lieutenant General Rick Burr AO DSC MVO to refuse to recommend Mr Murray Walker for an Australian Gallantry Decoration should be rejected; and
- the Minister should instead recommend to the Governor-General that Mr Walker be awarded the Medal for Gallantry.

Further, the Tribunal suggests that should its recommendation be accepted, the Respondent may wish to utilise the assistance of Colonel John Kemp DSC AM, the original nominator, in the drafting of a citation for this service.

## **CATCHWORDS**

*DEFENCE HONOUR* –Australian Gallantry Decorations – Vietnam – 1 Field Squadron – Operation COBURG – Operation PINNAROO – gallantry in action - hazardous circumstances – Fire Support Base ANDERSEN – service in nuisance minefield

## **LEGISLATION**

*Defence Act 1903* – Part VIIIC – Sections 110T, 110V(1), 110VB(1), 110VB(6)  
*Defence Regulation 2016* Section 35

### **Australian Gallantry Decorations**

Commonwealth of Australia Gazette No. S25 dated 4 February 1991, *Gallantry Decorations Regulations*

Commonwealth of Australia Gazette No. S420 dated 6 November 1996, *Amendment of the Gallantry Decorations Regulations*

## Introduction

1. The Applicant, Mr Murray Walker, seeks review of a decision of the former Chief of Army, Lieutenant General Rick Burr AO DSC MVO, to refuse to recommend him for an Australian Gallantry Decoration for his service during two operations in Vietnam on 18 February and 22 March 1968.<sup>1</sup>

## Decision under review

2. On 23 July 2019, Mr Walker applied to Defence seeking to have the Mention in Despatches (MID) for the above service upgraded.<sup>2</sup> In doing so, he originally requested that Defence upgrade the MID to the Star of Gallantry (SG). He also sought that his citation be rewritten to *‘embrace certain facts that were left out’*.

3. **Previous nomination in 1968.** On 25 June 1968, Colonel John Kemp DSC AM (Retd), then a Major, had nominated Mr Walker for the award of the Military Medal for the above service. (This was a nomination under the previous Imperial Honours system). The Tribunal heard testimony that upon receiving the recommendation from Major Kemp, Colonel Donald Dunstan, the then Deputy Commander of the 1<sup>st</sup> Australian Task Force (1 ATF), told Major Kemp that in his view, Mr Walker’s actions were deserving of the Distinguished Conduct Medal, to which Major Kemp agreed. Notwithstanding this, on 25 June 1968, Brigadier Ronald Hughes, Commander of the 1<sup>st</sup> Australian Task Force endorsed Major Kemp’s recommendation for the Military Medal. It was subsequently downgraded to the MID by the Commander of Australian Forces in Vietnam (COMAFV), Major General Arthur MacDonald.

4. Mr Walker’s original application, supported by Colonel Kemp, sought to have this perceived injustice rectified by way of having the MID ‘upgraded’ to the SG.

5. In a letter dated 6 July 2021, Lieutenant General Burr, while acknowledging that Mr Walker responded bravely during the two actions, stated that he was not reasonably satisfied that Mr Walker performed *acts of great heroism or conspicuous gallantry in action in circumstances of great peril*, as required by the eligibility criteria for the SG. He went on to state that Mr Walker’s bravery in 1968 ‘absolutely warrants recognition’ and that the award of the MID for his actions was appropriate.<sup>3</sup>

6. On 3 June 2022, Mr Walker made application to the Tribunal seeking review of the above decision. Mr Walker subsequently advised the Tribunal on 15 August 2022 that he did not seek the SG but the MG. This was confirmed at hearing.

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<sup>1</sup> Application for review, 3 June 2022.

<sup>2</sup> On 29 August 2019, Mr Walker provided further information in support of his application.

<sup>3</sup> Letter, OCA/OUT/2021/BN19953179, Lieutenant General Burr to Mr Walker, 6 July 2021.

## **Tribunal jurisdiction**

7. Pursuant to s110VB(2) of the *Defence Act 1903* the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for a defence honour in response to an application. Regulation 35 of the *Defence Regulation 2016* lists the defence honours that may be the subject of a reviewable decision. The Australian Gallantry Decorations, being the Star of Gallantry, Medal for Gallantry and the Commendation for Gallantry, are included in the defence honours listed in Regulation 35. Therefore, the Tribunal has jurisdiction to review decisions in relation to these defence honours.

8. As required by s110VB(6) of the Act, the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision. In accordance with s110VB(1) of the Act, as the Applicant seeks a defence honour, the Tribunal does not have the power to affirm or set aside the decision, but may make any recommendations to the Minister that it considers appropriate.

## **Conduct of the review**

9. In accordance with its Procedural Rules, on 16 June 2022, the Tribunal requested from the Secretary of the Department of Defence a merits-based assessment of Mr Walker's actions against the eligibility criteria for the Australian Gallantry Decorations. Further, the Tribunal requested a report on the material questions of fact and reasons for the decision to refuse the original application, together with copies of documentation relied upon in reaching the decision and any other relevant documents.<sup>4</sup>

10. On 29 July 2022, the Director of Honours and Awards in the Department of Defence provided a submission, on behalf of Defence.<sup>5</sup> It included a report written by Historical Honours and Awards Reviewing Officer, Air Vice-Marshal John Quaife AM (Retd), which included supporting documents. It also included a research report written by Major JT Fardell, dated August 2020, in response to Mr Walker's original application, which was apparently relied on by Lieutenant General Burr in making the reviewable decision. The report also included statements and supporting documentation from Major Lawrence Appelbee (Retd), a witness to the 22 March 1968 event, and Colonel Kemp.

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<sup>4</sup> Letter, Tribunal to Secretary, DHAAT/OUT/2022/341, dated 16 June 2022.

<sup>5</sup> Directorate of Honours and Awards letter to the Tribunal DH&A OUT/2022/0027 dated 21 December 2021.

11. The Defence submission was forwarded to Mr Walker for comment on 1 August 2022 who in response stated that he believed he met the criteria for the MG.<sup>6</sup>

### **Mr Walker's service**

12. Mr Walker was enlisted as a National Serviceman on 19 April 1967. He was posted to 1 Field Squadron, Vietnam, as a combat engineer, at the rank of Sapper on 27 November 1967, where he served until completion of his tour on 3 December 1968. Mr Walker discharged on 18 April 1969 at the rank of Lance Corporal, having completed his prescribed period of National Service. For this period of service, he would be eligible for the following Defence honours and awards:

- a) Mention in Despatches;
- b) the Australian Active Service Medal with Clasp 'VIETNAM';
- c) the Vietnam Medal;
- d) the Australian Defence Medal
- e) the Anniversary of National Service 1951-72 Medal; and
- f) the Republic of Vietnam Campaign Medal.<sup>7</sup>

### **Operation COBURG**

13. Mr Walker's service on 18 February 1968 took place as part of Operation COBURG. During the 1968 Tet Offensive, 1 ATF found itself simultaneously protecting the approaches to the American bases at Long Binh and Bien Hoa, as well as fighting the Viet Cong in Phuoc Tuy Province.<sup>8</sup> From 24 January 1968 to 1 March 1968, Operation COBURG, involving three infantry battalions and supporting units, intended to deny the Viet Cong access to suitable sites from which to bring 122mm rocket fire on to the Long Binh or Bien Hoa airbase complexes. The operation took place 55km NNW of the 1 ATF Base, which included Fire Support Base (FSB) Andersen, where Mr Walker was based.

14. Seven Australians were killed in action during Operation COBURG, and another three died of wounds. Seventy five were wounded in action.<sup>9</sup> Two Australians were killed in action and another five were wounded in action during Mr Walker's night standing patrol outside FSB Andersen on 18 February 1968.

### **Operation PINNAROO**

15. Mr Walker's service on 22 March 1968 took place as part of Operation PINNAROO. This was a reconnaissance-in-force operation in an attempt to destroy Viet Cong base installations in the Long Hai mountain complex. The Long Hai peninsula, known by the Viet Cong as the Minh Dam Secret Zone, had long been the base for the

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<sup>6</sup> Applicant's response of 15 August 2022.

<sup>7</sup> Service Record, Walker, Murray C, 5715168.

<sup>8</sup> Website, Operation Coburg, Australian War Memorial, <https://www.awm.gov.au/collection/E84756>, accessed 31 August 2022.

<sup>9</sup> Ashley Ekins and Ian McNeill, *On the Offensive, the Official History of Australia and the Vietnam War*, Allen & Unwin, Canberra, pp.446-447.

C25 District Company and other enemy units and infrastructure, and was heavily mined. Together with mines, the Long Hais were known to contain a high concentration of ferrous metals, the result of extensive earlier bombing. This made mine clearance very slow and difficult. Although enemy contacts were said to be light, the majority of deaths and injuries were via mines and booby-traps.<sup>10</sup> Chief of the General Staff Lieutenant General Sir Thomas Daly later reflected that it was *'the last place in the world that I could want to operate myself'*.<sup>11</sup> Brigadier Hughes (the Task Force Commander who had endorsed the recommendation for the Military Medal) described the operation as *'the worst operation I had to sit through the whole time I was there – I chewed my knuckles quite a bit'*.<sup>12</sup>

16. Ten Australians were killed in action during Operation PINNAROO, and another 36 were wounded in action.<sup>13</sup> Four Australians were killed in action and another four were wounded in action during the reconnaissance-in-force fighting patrol that Mr Walker was part of on 22 March 1968.

### **The citation supporting the 1968 nomination**

17. On 25 June 1968, Major Kemp recommended Mr Walker for the award of the Military Medal which was endorsed by Brigadier Hughes. The supporting citation states:

*"Sapper Murray Walker enlisted in the Regular Army Supplement (National Service) on 19 April 1967, and was allotted to the Royal Australian Engineers. He joined 1<sup>st</sup> Field Squadron on his arrival in South Vietnam on 27<sup>th</sup> November 1967.*

*On the night of 17<sup>th</sup> February 1968, during **Operation COBURG**, Sapper Walker was a member of a standing patrol guarding an approach to an Australian fire support base. During the night the base was heavily attacked resulting in seven of the men in the patrol being killed or wounded including the patrol commander. The patrol radio was destroyed. Sapper Walker took command and rallied the remainder. He then went for aid knowing full well that he ran the risk of being taken for one of the assaulting enemy force in the dark. Despite the hazards involved he successfully reached the base and led a party back to bring in the casualties.*

*On 22<sup>nd</sup> March, 1968, during **Operation PINNAROO**, Sapper Walker was attached to the 7<sup>th</sup> Platoon, C Company, 3<sup>rd</sup> Battalion, The Royal Australian Regiment, when the platoon suffered several casualties as a result of a mine explosion. The presence of further mines made it dangerous to move, even to assist the casualties.*

*The clothing and equipment of one of the casualties caught fire which threatened to ignite the ammunition and explosives he was carrying. Without thought for his own safety Sapper Walker made his way to the casualty. Using a fire extinguisher lowered from a helicopter and then water from his water bottles, he extinguished the blaze.*

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<sup>10</sup> Ibid, p.339.

<sup>11</sup> Ibid, p.341

<sup>12</sup> Ibid.

<sup>13</sup> Ibid, pp. 449-450.

*He then worked on mine clearing for a further four hours to enable the platoon to return without further casualties.*

*In these actions, Sapper Walker's courage and dedication to duty brought great credit to himself, his unit and the Corps of Royal Australian Engineers.*"<sup>14</sup>

## **Imperial honours**

18. The Military Medal and the MID are both Imperial honours. The Military Medal is a discretionary third level gallantry honour, awarded for acts of gallantry and devotion to duty in action. The MID is a discretionary fourth level gallantry honour, awarded for an act for bravery in an operational area.<sup>15</sup>

19. There is no direct equivalent of the Imperial honours in the suite of Australian gallantry decorations. However, the Military Medal is considered most akin with the MG and the MID is considered most akin with the Commendation for Gallantry, given their respective standing in each suite of decorations.

## **Operation COBURG on 18 February 1968**

20. **Mr Walker's written submissions.** Mr Walker submitted in his application that he had been on a night standing patrol outside the wire of FSB Andersen when it was attacked by enemy mortars, rocket propelled grenades and ground assault. A mortar round landed in the middle of his standing patrol, killing two men, wounding five others and destroying the patrol radio. Without radio support to call for help, Mr Walker made the decision to go back to the FSB to get urgent medical help. In doing so, he had to negotiate friendly fire from US forces operating armoured personnel carriers manning the FSB perimeter during the continued attack on the FSB. Once inside the FSB he reported to Second Lieutenant Peter Perry. Mr Walker then agreed to go back out on a recovery mission for the wounded and dead.

21. As part of his application on 29 August 2019, Mr Walker stated in detail:

*"My citation for the incident at Fire Support Base Andersen,<sup>16</sup> does not mention that the patrol was located approximately 400 metres outside the perimeter wire and the attack by the enemy started at 1am in the morning. It was not long before a mortar round landed in the middle of the patrol instantly killing two men (a Staff Sergeant and Corporal) and wounding five others. Luckily I was one of the three that was not injured and went to the aid of the two seriously wounded soldiers but quickly realized they needed serious medical attention. One soldier was screaming so loudly in pain that I had to put my hand over his mouth so that he*

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<sup>14</sup> AFW3121 – Recommendation for Honours and Awards, Sapper Murray Clarke Walker.

<sup>15</sup> Report of the *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour*, Defence Honours and Awards Appeals Tribunal, Canberra, 2013, pp. 404-405.

<sup>16</sup> The Operation COBURG incident of 18 February 1968.

wouldn't give our position away bearing in mind there were enemy soldiers around us and between the patrol and the Fire Support Base. I decided to try and get back to the Fire Support Base for help. The two other men not wounded tried to talk me out of doing so because of the danger involved. I knew both wounded men were bleeding from arterial wounds and would not last long if medical help was not forthcoming. Approximately 100 metres from the perimeter wire I was fired upon repeatedly by allied forces that were not aware that there was a patrol outside the wire and refused to stop firing despite me yelling out who I was. This was very frightening because most of the thirty calibre rounds were fired from APC's which were looking down on the ground where I was. This lasted for a considerable amount of time before they allowed me to breach the wire and come in.

After approximately half an hour I was ordered to lead a patrol out of the Fire Support Base back to the standing patrol because I was the only one that knew where they were. This was quite dangerous because the enemy had not fully withdrawn. We brought the dead and wounded in at the break of dawn making it a very long night."

Mr Walker provided the following additional information:

*"The standing patrol of ten men lay on top of the ground in a line spaced approximately one metre apart or closer. The mortar round exploded near the centre of the men. I was located the third man in from one end and was not wounded. Therefore, to be approximately five to six metres from where the mortar round detonated with no cover was very terrifying.*

*To realize there were only three of us that were capable of doing anything was not a bright outlook. Both the Staff Sergeant and the Lance Corporal were killed so someone had to take control. I established that two of the wounded were bleeding to death. I decided to return to the Fire Support Base and was fired on (by) Americans who manned APCs inside the base. Every time I called out that I was an Australian coming in they just opened fire thinking it was an enemy trick. Eventually I did come in and lead a patrol out after about half an hour to collect the dead and wounded. To be honest I did not like the thought of going out again, but I was the only one that knew where the men were."*<sup>17</sup>

22. **Witness: Major Peter Perry (Retd).** Mr Walker's Troop Commander was then Second Lieutenant Peter Perry. In a statement considered by Defence in making the reviewable decision, he said the FSB was attacked with rocket propelled grenades and machine guns. Importantly, he witnessed Mr Walker's arrival back in the FSB and was involved in Mr Walker's decision to leave the relative safety of the FSB to embark upon the recovery mission of the dead and wounded.

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<sup>17</sup> Application for review, 3 June 2022.

23. Major Perry was angered that Mr Walker's nomination had been downgraded to a MID, in respect of both operations. He said the only thing Mr Walker did not give was his life.<sup>18</sup>

24. Major Perry provided a detailed statement, which was subsequently provided to Defence to help inform its consideration of Mr Walker's service. It includes:

*"The boys left on their patrol going some 300 metres beyond the wire towards the South West where they lay down in a single row with their backs to the FSB. The remaining members of the troop settled down to our nightly defensive routine within the Base area...The evening passed slowly. Captain Dick Lippett, the 3RAR doctor and I were sitting on top of our bunker just prior to midnight when a green flare was fired from the South West of our position in fairly close proximity of where I had guessed that our patrol may have been located. Nothing further eventuated within the next 40 odd minutes or so after doing a radio check with John, I hit the pillow. Then just as I pulled up my blanket the first two of many mortar rounds were launched by the enemy.*

*The enemy walked their bombs through the FSB from East to South West passing beyond the wire on through to the patrol position. All hell broke loose... as we then received concentrated fire from enemy Rocket Propelled Grenades (RPG's) and machine guns. They also followed up with at least two ground assaults launched primarily against the US guns during which the enemy partially breached the US defensive wire protection.*

*Meanwhile, as our troop position had remained relatively unscathed and didn't seem to be in any immediate danger, I returned to our Headquarter bunker. Upon arrival the radio operator advised me that we had lost contact with our patrol shortly after the commencement of the mortar barrage. During breaks in the fighting and whenever I could get a break on the command radio network, I tried unsuccessfully many times to get a response from the patrol.*

*After what seemed like hours I received a radio call from the APC Commander (2<sup>nd</sup> Lieutenant Andrews) reporting that he had seen movement on the perimeter wire near where our patrol may have been and that he would call by to pick me up. Firing had become spasmodic by now as the enemy appeared to have withdrawn. The whole of the immediate area of the base was lit up like Myer's on Xmas eve compliments of vehicles burning fiercely in the US gun position...We called for an immediate ceasefire on figuring that the person waving from the knolls brim was one of ours. I yelled to him that it was safe to come in whereupon he jumped over the wire and raced to our APC. It was a moment that Sapper Murray Walker, nor I are ever likely to forget.*

*We returned to my bunker where Murray's harrowing story unfolded. It is not, in my opinion, necessary to write in detail the full description of that telling. It suffice to record that the patrol had heard movement close to their position prior to the mortar barrage. They received direct mortar bomb hits during this initial barrage which killed McLaughlin, Garrett (knocking out the radio), Sappers*

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<sup>18</sup> Email, Major Perry to Ms Alicia Cox, 9 March 2020.

*Allan Pattison and David Steen. Wounded were Sappers Robert Creek, Jack Lawson (he was only 18 years old) and Lyn Stutley. The physically unscathed survivors were Sappers Murray Walker, Vince Tobin and Geoff Coombs (Tobin and Coombs were both Killed in Action on the next operation ironically running to assist Walker). The enemy assault forces barely skirted their position during their initial assault. The patrol remained trapped and totally isolated until Murray executed his courageous decision to 'come in for help' alone.*

*A recovery mission was mounted which meant that Murray, as the only person with the knowledge of their location, had to lead them out. I had needed some time to 'bring Murray back down' from his highly emotive state and then persuade him that he had to take the lead. Our personal conversation at the time shall remain just that. It took an extreme act of courage for him to return to the scene as it did to come in in the first place. ”<sup>19</sup>*

25. **Witness: Colonel Kemp.** Colonel Kemp was not an eyewitness to Mr Walker's actions but received comprehensive briefings from (the late) Captain Vivian Morgan, Troop Commander of 3 Troop and other members of 3 Troop, as well as officers from the 3<sup>rd</sup> Battalion, the Royal Australian Regiment, (3 RAR) Battalion Headquarters. He stated that:

*...The circumstances described to me were of the extreme bravery of Spr Walker who, having experienced the devastation caused by the mortar attack on the Standing Patrol, finding the Patrol Commander S/Sgt McLachlan and three other patrol members dead, three seriously wounded, two of whom had arterial wounds and were bleeding to death, and their communications with the base destroyed, did what he could to stabilise the situation and recognised the imperative needed and urgency of getting help for the wounded sappers. At this stage the enemy attack was still continuing and he was at least 300 metres outside the perimeter, in the dark, and without communications. He faced friendly defences that were nervous and jump and unaware of the presence of the patrol – gunfire was still being exchanged. He had an option at that time of laying low until the enemy action had ended, but instead at great personal risk he made his way to the perimeter and eventually his calls for help were recognised, he was let in to the defensive position, and later led a 3 RAR platoon back to the rescue and retrieve the devastated patrol. The descriptions of Spr Walker's actions by all confirmed his selfless courage during the period. I hoped that had been reflected in the nomination.<sup>20</sup>*

## **Operation PINNAROO 22 March 1968**

26. **Mr Walker's written submissions.** Mr Walker was on a reconnaissance-in-force fighting patrol with 7 Platoon, C Company 3 RAR proving clear routes by mine clearing safe lanes in the Long Hai mountains. During that patrol, Private Richardson stepped on a mine seriously wounding himself and his section commander, Corporal Fox. Mr Walker

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<sup>19</sup> Major Perry, Fire Support Base Andersen – Operation Coburg...The Sappers Story.

<sup>20</sup> Statement by Colonel Kemp, undated. Provided with Defence Report.

commenced clearing a safe lane singlehandedly to provide assistance to the two wounded soldiers as the second combat engineer in his splinter team was unable to assist due to the shock and trauma of the incident. Shortly after, a third soldier, Private Coles, initiated a mine, the blast of which killed himself, wounded the Platoon Commander (Second Lieutenant Appelbee) and threw Mr Walker forward, off the proven path. Mr Walker was badly shaken but was uninjured. The clothing of the deceased Private Coles subsequently ignited and there were grave concerns that the high explosive and pyrotechnic materiel he was carrying in his webbing could explode, at the risk of killing or injuring a number of soldiers in close proximity. Mr Walker made his way to the first explosion, proving the ground as he went, administered combat first aid to the wounded and sanitised the area immediately around them to support their medical evacuation. He then made his way back to Private Coles to douse the fire, which had increased significantly in intensity. The ingress to Private Coles was made in haste, in part across previously unproven ground, and with a significant risk of explosion. Using a fire extinguisher that had been lowered from a helicopter as well as water from his own water bottles, Mr Walker was able to extinguish the fire. A second splinter team of two combat engineers was called to assist with the mine clearing task to reach the deceased and wounded but they too were killed by another mine explosion. Mr Walker continued singlehandedly in clearing safe lanes to the wounded and dead to facilitate their recovery and subsequent medical evacuation. This task continued for about four hours.

27. Mr Walker stated that while he realised that mine detection was part of his job, the circumstances of having wounded men all around him requiring urgent medical attention and evacuation was quite daunting and stressful.

28. Regarding his service in March 1968, Mr Walker in detail stated:

*“With regard to operation Pinnaroo, I was on a patrol with 7 Platoon, C Company, 3RAR on the Long Hai Hills when a soldier stepped on a mine seriously wounding himself and another. It was my job as Supporting Combat Engineer to clear a safe path to the wounded men. During this task another soldier followed behind me to give me covering fire from snipers higher up the ridge. He accidentally stepped over the boundary of the 300 mm path I had cleared and trod on a mine killing him instantly and wounding two others that were further behind. I was approximately four metres in front of him when the mine detonated and again I was not wounded but thrown onto a fallen tree from the blast. The mine detector could not be used due to the amount of shrapnel in the ground so I had to use a bayonet to clear the path which was very stressful and time consuming. Realising we could do nothing for the man who was killed I carried on proving a path to the wounded men but after a short period of time the clothing on the man that was killed caught fire. Other soldiers close to the Platoon Commander could have put the fire out but were traumatized so I turned around and went back and extinguished the fire, as described in the citation. As the fire had really caught on I had no time to prove the ground to him and took a great risk especially as his ammunition could have exploded, bearing in mind the man was blown off the path by the blast. I was part of a two man splinter team and my other sapper was also traumatized by what had happened and could not move and was unable to help me. Realising the task was too big for me the Platoon Commander radioed back to base and asked for more Engineers. Two Engineers and*

*supporting Infantry came to my assistance but unfortunately on the way one of the Engineers trod on a mine and both were instantly killed as well as wounding others. The situation was now very dire as three mines had claimed the lives of three men and wounded many others in a very short space of time. Everyone was afraid to move for fear of being the next casualty. I however carried on and reached the two wounded men from the first mine who were finally air lifted to safety quite a few hours after treading on the mine. After the evacuation of the dead and wounded, I continued proving safe passages for the rest of the patrol to exit the area and return to base.”<sup>21</sup>*

29. He further added:

*“After the first mine was detonated two men were laying on the ground severely wounded. I immediately cleared a path to them with a mine detector but as there was so much shrapnel in the area the detector was not reliable so the path had to be cleared with a bayonet which was slow going. Unbeknown to me an infantry soldier decided to follow behind me on the nine inch path to provide covering fire as we were very exposed. Unfortunately he stepped off the path and detonated a mine which killed him instantly and wounded another two behind him. I was no more than three to four metres in front of him and was thrown onto a fallen tree by the percussion of the blast.*

*Once again, I was very lucky not to be killed or wounded as M16 mines can kill up to one hundred metres. The reason I have outlined my involvement in the two actions is that I was badly shaken in both instances. To be blown off my feet by a mine was not a good experience but I had to carry on as the only person capable of proving a path to the wounded men and approaching another soldier already dead and very much on fire.*

*In conclusion it was not what I did in the two actions but the duress I was under.”<sup>22</sup>*

30. **Witness: Major Appelbee.** Major Appelbee, then Second Lieutenant and Platoon Commander of 7 Platoon, C Company, 3 RAR was wounded when the second mine detonated. Up until his injury, he witnessed everything Mr Walker had outlined in his application.

31. Major Appelbee provided a very useful statement on 27 March 2020 which offers a clear description of the events of 22 March 1968, up until the time he was wounded, and the significant role Mr Walker played singlehandedly:

*“I was the Platoon Commander of 7 Platoon, C Company, 3 RAR on 22 March 1968.*

*....*

*To assist in the capacity to undertake this patrol, RAE personnel attached to C Company had, in the two previous days (20 and 21 march) searched, cleared and*

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<sup>21</sup> Letter, Mr Murray Walker to the Directorate, 29 August 2019.

<sup>22</sup> Ibid.

*marked with tapes a path of approximately one metre wide from the Company base southward towards the platoon objective, the knoll.*

*As at PM 21 March, the attached RAE personnel had cleared a safe walking track for a distance of about 400 metres from the Company base, some 200 metres “short” of the patrol’s objective.*

*From this point, the two RAE personnel under my command commenced the task of clearing the agreed selected route to the knoll, which lay some 200 metres distant. To reach this point, the two RAE personnel had been leading the patrol, ensuring that the 400 metres of the route previously searched and cleared, had not been interfered with by the enemy during the hours of darkness during the night of 21/22 March.*

*This clearing process was slow, tedious and stressful, particularly for the two RAE personnel, Sapper Walker and Sapper Z. By approximately 1030 hours the 400 metre point had been reached without incident, and the searching and clearing of the remaining unsearched part of the route commenced. The need for exceptional care was demanded of both these soldiers, as the entire area of the search route was contaminated with a high concentration of ferrous material, the result of extensive bombing of the Long Hai hills, since probably the early 1930s. The Australian Army electronic mine detecting available and allocated to Sappers Walker and Z was primitive and which in the circumstances at hand generally produced results which were frustratingly unreliable. This obligated in the Sappers having to revert to use of bayonets and bare hands to clear the pathway.*

*At a point perhaps 450 metres from the Company base, with the Sappers leading and continuing to clear the pathway, the landform became a saddle between the Hon Vung and Knoll Features.*

*As had been the general tactical movement procedure employed up to this time of the patrol, members of 7 Platoon, where possible, “rock hopped” on both flanks of the route, providing protection to the Sappers who continued to search and clear the pathway.*

*The time was approximately midday. At some point whilst the patrol was transiting through the saddle, with the sappers having, to the best of their ability, cleared the route, Private Richardson, RAInf, stepped onto a land mine. The explosion seriously injured Richardson and his Section Commander, Corporal Fox, RAInf. Both soldiers lost limbs from the incident.*

*The mine, in all probability, was an American designed M16A1 mine, designed, once initiated, to “jump” to approximately waist high before exploding. In this*

*incident, the mine failed to “jump”. Whilst remaining buried, and this reduced the lethality potential.*

*It was at this point that Sapper Walker’s professionalism became clearly focused. His co-Sapper, Z, became reluctant and or unable or unwilling to participate in the management of the situation, leaving Walker as the sole Sapper to address the issue.*

*Walker immediately commenced clearing a safe path towards Richardson and Fox, who lay some 4 metres from his, Walker’s position.*

*Shortly after commencing this task, a second M16A1 anti personnel mine was initiated some 4 metres distance from Walker’s position: Private Coles, RAInf had initiated the mine, which had operated as designed, rising to approximately waist high before exploding. Private Coles was fatally injured with massive injuries to his back and head. The blast caused Walker to fall and caused minor injuries to myself.*

*Walker continued to clear a safe path towards Richardson and Fox, then cleared a safe area around their position, enabling elementary assistance to be given to the two wounded soldiers.*

*Immediately on the second blast, Major Hands had ordered that additional Sapper support be sent to assist Walker. Two RAE personnel were dispatched from the Company Base, with two RAInf soldiers to provide local protection to the Sappers accompanying. When at a distance of approximately 150 metres from the Richardson/Fox incident, one of these four soldiers, moving on the previously cleared and marked track, initiated an M16A1 mine, killing both Sappers and seriously wounding one of the two RAInf members. This incident was managed by Major Hands from his position on the Hon Vung feature.*

*On reaching Richardson and Fox, Walker assisted in the provision of first aid and then continued to enlarge the safe area round this site.*

*The time was now approximately 1300 hours, perhaps 30 minutes after the Richardson/Fox mine had been initiated. During this time, it had been identified that the Coles blast had imitated a small fire on and around his body.*

*Aeromedical evacuation by helicopter of Richardson and Fox was actioned and was completed by approximately 1330 hours, by which time the fire in the vicinity of Coles’ body had increased. Coles was known to have been carrying high explosive hand grenades and other combustible pyrotechnics, and the risk of their detonation was high.*

*One of the returning RAAF aircraft had been tasked to deliver by winch onto the Richardson/Fox site a large fire extinguisher which arrived at approximately 1345 hours. Walker took delivery of the extinguisher, and having cleared a path, closed onto the burning body and its immediate surrounds and extinguished the fire.*

*Walker then searched and cleared a safe area around the deceased Coles in preparation for the aeromedical evacuation of Coles' body. This was completed by approximately 1345 hours.*

*On orders from Major Hands, the 7 Platoon patrol returned to the Company base on Hon Vung, via the taped route, arriving at the base at approximately 1545 hours...*<sup>23</sup>

32. **Colonel Kemp.** Again, Colonel Kemp was not witness to the actions of Mr Walker but was again informed by Captain Morgan, Second Lieutenant Perry, other members of 3 Troop on Operation PINNAROO and officers from 3 RAR. The reports he received confirmed the bravery that Mr Walker had shown. In detail he stated:

*The effect of an M16 Mine detonation is horrendous, spraying deadly shrapnel in all directions at waist height. In this situation, there were two wounded infantry soldiers from the first detonation and the other soldiers of the platoon were frozen in their tactical positions due to the fact that when one mine has been detonated there is a high probability that there will be other mines in the vicinity. Spr Walker was working to clear paths so that the wounded soldiers could be evacuated when a further mine was detonated killing a soldier and wounding two others. Spr Walker was in the immediate killing radius of this second detonation and was flung off the cleared track by it. Despite this nerve shattering experience, compounded by the fact that his supporting sapper had been so incapacitated that he was unable to move and incapable of assisting, Spr Walker resumed mine clearing so that aid could be given to the wounded soldiers. At this stage the clothing of the soldier who had been killed in the second blast caught fire, the flames threatening to explode the ammunition and devices he was carrying, this placing the soldiers of the platoon in great danger, but also to mutilate his body. Recognising the urgency and ignoring the danger of movement Spr Walker moved to the body and extinguished the flames using a fire extinguisher lowered from a helicopter and then from his own water bottle. Then, in this highly stressful situation, for a period of some four hours he maintained his self-control and cleared paths to all the casualties so they could be evacuated and eventually to all the members of the platoon so that they could be airlifted to safety. A further tragedy accentuated the stress on Spr Walker, in that the Platoon Commander recognised the need for additional engineers to assist, but in their rush one of the two sappers who were despatched to assist from an adjacent platoon stepped on an M 16 mine and both were killed. Coincidentally, both of these sappers were close friends of Walker and had been members of the Standing Patrol that was decimated at FSB Andersen on 18 February.*

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<sup>23</sup> Letter, Major Appelbee to Ms Alicia Cox, 27 March 2020.

Colonel Kemp submitted that Mr Walker showed great bravery in that:

- *despite having been knocked over by the blast of the second M16 mine he proceeded with his mine clearing task;*
- *at great personal risk, recognising the immediate danger created to the whole platoon by the burning clothing and ammunition of the soldier who had been killed, moved to the body and extinguished the flames with the extinguisher from the helicopter and then by water from his own water bottle;*
- *in a highly stressful situation he continued mine clearing on his own for some four hours so that the wounded could be evacuated and then so that the rest of the platoon could be extracted without further casualties.”*

### **The 1968 nomination process and outcome**

33. **Applicant’s position.** Noting that Mr Walker’s nomination had not resulted in the Military Medal, (or a Distinguished Conduct Medal), but an MID, Mr Walker stated that he was likely a victim of the quota system, which in his view resulted in a preference for infantry. Mr Walker said that he had to live for over fifty years wondering whether his award was fair, given his exposure *‘to serious harm on two separate occasions helping others’*. Noting the downgrade to the MID, Mr Walker queried if there had been maladministration.

34. Colonel Kemp confirmed that Colonel Dunstan had agreed that the Distinguished Conduct Medal was an appropriate award to recognise Mr Walker’s service, and concluded by saying:

*“Sapper Walker had shown immense courage, bravery and concern for his fellow soldiers and handled extremely difficult and hazardous situations on both occasions mentioned in the citation. I believe that a great injustice has been done with the award only of an MID. I stand by this advice and urge strongly that the injustice be corrected.”*<sup>24</sup>

35. **Defence position.** Lieutenant General Burr stated that *“the nomination was considered shortly after it was submitted, most likely by Commander Australian Forces Vietnam, and...throughout the consideration process, the [Military Medal] MM nomination was downgraded to a MID.”* Lieutenant General Burr did not consider that an absence of evidence, in relation to who precisely had downgraded the nomination or for what reason, could be considered to be maladministration. Lieutenant General Burr went on to state that it is his view that *‘the award was open to the final approving authority to determine a priority for honours within the scale for operational awards for that period’*, but in a possibly contradicting statement, *‘a decision was made that your cited actions were appropriate for the MID and they did not meet the criteria for the [Military Medal] MM’*.<sup>25</sup>

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<sup>24</sup> Statement by Colonel John Kemp DSC AM (Retd).

<sup>25</sup> Letter, OCA/OUT/2021/BN19953179, Lieutenant General Burr to Mr Walker, 6 July 2021.

36. The Defence Report indicates:

*The nomination for an [Military Medal] MM was processed and signed by KEMP and HUGHES, at some point in time after this the award nomination was downgraded to a MID by an unknown person or persons. This does not indicate maladministration however; it is probable that a 'quota system' was a policy put in place by The Sovereign and enforced as indicated by the examples references I and J (contemporary research material concerning the quota system).'*

37. **Tribunal Observation.** The Tribunal observes that the COMAFV Honours and Awards File includes a list of recommendations for honours and awards for January to June 1968 proposed by Major General MacDonald, COMAFV, in a 'desired order of preference'. The recommendation for Sapper Walker is listed as being for the MID, and 18<sup>th</sup> in a list of 36 recommendations for this award. The Tribunal considers that Mr Walker's nomination was likely downgraded both having regard to the quota system, and relative standing against other written nominations.

38. However, as the Tribunal's role is merits review, the machinations of the nomination process, its outcome and whether or not there had been maladministration had no bearing upon its consideration.

39. It is nonetheless important to note the fact of Mr Walker having been contemporaneously nominated for a Military Medal by Colonel Kemp and Brigadier Hughes, was an important measure as to how his chain of command viewed his actions at the time.

#### **Defence submission – MID remains appropriate**

40. As noted above, on 6 July 2021, Lieutenant General Burr confirmed the Defence position that the award of the MID for Mr Walker's actions remained appropriate. In comments set out in a correspondence cover sheet provided to Lieutenant General Burr, the Director General Personnel – Army, Brigadier Matt Patching stated:

*"Sir - having considered the request and supporting review, I agree with the recommendation to not support retrospective awarding of an SG for this action. Having also considered the levels of Gallantry Awards in the Australian Honours System (from 1991), it is clear that Mr Walker's actions speak to 'gallantry in action', which is the qualifying criteria for the Commendation for Gallantry - approximately equivalent to the Imperial MID. Therefore, it is my view that awarding the MID was and remains a reasonable decision taken by the commander at the time."*<sup>26</sup>

41. **The Defence Report.** This report, primarily written by Air Vice-Marshal Quaife, includes a fresh merits based assessment of Mr Walker's actions. Defence attempted to

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<sup>26</sup> DGAPC Correspondence Cover Sheet – Ceremonial retrospective submission Mr Murray Walker – Upgrade of MID to SG.

find relevant material in after-action reports for both operations but was unable to do so and primarily relied on material submitted by Mr Walker and Majors Appelbee and Perry.

42. **Operation COBURG.** Air Vice-Marshal Quaife stated that Mr Walker demonstrated gallantry by rising to Second Lieutenant Perry's challenge to lead the recovery team back to the wounded and killed soldiers.

43. He stated that the fact that Mr Walker's patrol was exposed to 'hazardous circumstances' was fairly obvious given the mortar attack had struck down seven soldiers, but the unknown element is the degree of hazard that surrounded Mr Walker's act of gallantry. In doing so, Air Vice-Marshal Quaife stated that in describing his efforts to persuade Mr Walker to lead the recovery patrol, Second Lieutenant Perry makes no suggestion that the recovery patrol was deliberately exposed to 'hazardous circumstances' beyond the conduct of more routine patrol and combat activity. Further, in Defence's view, there was no evidence to suggest the recovery patrol faced circumstances of great peril. However, Mr Walker's statement does indicate that the enemy had not fully withdrawn and part of the FSB perimeter was still under attack, and the recovery patrol was dispatched during the hours of darkness and only returned to the FSB perimeter with the dead and wounded at the break of dawn, making it a very long night.

44. **Operation PINNAROO.** Air Vice-Marshal Quaife stated that Mr Walker's persistence in his job for a period of some four hours, complicated by the requirement to extinguish a fire posing a risk from high explosive materials, required an additional element of courage. And that while, in large measure, Mr Walker executed the job that was expected of him, entirely in accordance with his training, that he was able to do so in such challenging circumstances represents an act of gallantry worthy of recognition.

45. The report suggests that to the untrained or less disciplined soldier, clearing a path through a minefield clearly represents hazardous circumstances or perhaps great peril. For Mr Walker this was perhaps not so, given he was trained and expected to do it. However, Defence put forward the view that Mr Walker's bravery in persisting with his difficult task over a prolonged period clearly demonstrates the additional element of courage and fearlessness that defines gallantry.

46. **Defence conclusion.** These considerations ultimately led to a finding by Defence that Mr Walker's actions on both operations met the criteria for the Commendation for Gallantry, in that he performed acts of gallantry worthy of recognition, which was akin to the MID which he had already received.<sup>27</sup>

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<sup>27</sup> Defence Report.

## **Mr Walker's comment on the Defence Report**

47. Mr Walker disputed the Defence contention in relation to Operation COBURG that with the Patrol commander and second in command both dead and the patrol radio destroyed he had little alternative but to return to FSB Andersen to get help, stating that the other two unwounded soldiers did not want to return until daylight, but due to the fact that two of the wounded were 'bleeding to death' he chose to return. He also suggested that the recovery patrol faced circumstances of great peril.

## **Assessing Mr Walker's actions**

48. There were limited primary sources of evidence concerning Mr Walker's relevant actions. The citation by Colonel Kemp within the nomination of 1968 provided the most contemporaneous record of Mr Walker's actions. The Tribunal, like Defence, had to largely rely upon accounts which Mr Walker, Major Perry and Major Appelbee had made some 50 years after the actions. The Tribunal had the benefit of oral evidence from Mr Walker and Colonel Kemp at hearing.

49. Fortunately, there was little dispute as to the actions of Mr Walker during both operations. Further, Defence conceded that Mr Walker had acted gallantly concerning certain actions he took in both operations.

50. It was more the interpretation of those actions against the eligibility criteria as well as the general environment concerning Mr Walker's actions, particularly whether that environment was 'hazardous', which was the focus of the hearing and ultimately the Tribunal's consideration.

## **Tribunal hearing**

51. **Mr Walker's evidence and submissions.** The Tribunal was impressed with the way in which Mr Walker gave evidence. He was forthright in manner and where appropriate made concessions. He was modest and not prone to exaggeration. We found him to be truthful, credible and that he was doing his best to accurately recall traumatic events of some 54 years ago.

52. **His training and experience.** Mr Walker was sent to Vietnam on 27 November 1967 as a young 20 year old sapper. By the time of Operation COBURG on 18 February 1968, he had only been in country for little over two months. As such, Operation COBURG was his first involvement in a major operation and 18 February 1968 was the first time he had gone out on night standing patrol. He said he knew limited first aid.

53. After the events of 18 February 1968, he was given five days well-earned rest and convalescence leave in Vung Tau, Vietnam.

54. For Mr Walker, training in mine clearance had all been in country in Vietnam. Operation PINNAROO had been his first major reconnaissance-in-force fighting patrol

involving extensive mine clearance tasks. On the days leading up to 22 March 1968 he had been in the Long Hai mountains and had 'done a bit of mine clearing'.

### **Operation COBURG**

55. In evidence Mr Walker was asked to clarify the night of the attack on the FSB. He explained that there had been no intelligence that the enemy might attack at the time he embarked upon the standing patrol at dusk. Close to 0100 hours, mortar attack suddenly came from the other side of the FSB to where his patrol was located. He was aware that mortar attacks were being 'walked through' closer to the FSB, but he was unsure of the sector of the attack. He said that to this day, he was unsure whether the mortar attack which landed in the middle of his patrol was by design or 'a fluke'.

56. In evidence Mr Walker said that the unwounded surviving members of the patrol said that he 'was crazy' to go back for help, noting that the FSB was still under mortar and ground attack and that allied forces were defending the FSB.

57. Mr Walker explained that as he approached the FSB he had to lay low in the sloping ground, as American armoured personnel carriers and machine guns fired overhead at his general position. In the quieter breaks between 'friendly' and enemy fire he tried to yell out and alert the Americans that he was Australian. Under such conditions, and at night, Mr Walker found it very difficult to convince them, and it took some 20 minutes before a cease fire was called and Mr Walker was allowed to return to the FSB under relative safety. Mr Walker said that he had no training, instruction or experience on how to approach the FSB from outside of the wire in such circumstances. He said that the fact that two enemy soldiers were later found dead at the point where he tried to enter the FSB rather confirmed his fear that the enemy continued to operate in that general location through the night.

58. Mr Walker explained that once inside the FSB and he had recovered from his ordeal, he was asked to go out again by Major Perry. He said that this was not something that he wanted to do, but recognised that he had to lead the patrol to the location. Mr Walker said that by the time of the recovery mission he believed the enemy fire had ceased, but he was unsure if the enemy was still out there.

### **Operation PINNAROO**

59. Mr Walker explained that the mine clearance detector he was issued with 'was not a bad machine' but that there was a lot of shrapnel on the Long Hai Mountains which gave false readings. He said that, given the dangerous job, he often painstakingly 'proved' the ground with his bayonet every nine to ten inches. He explained that the Long Hais were also rocky and that soldiers would 'rock hop' at times to avoid the ground in which mines could be hidden.

60. Mr Walker said that in the preceding days to 22 March 1968 he was aware that there had been earlier ambushes and sporadic contact with the enemy in the Long Hais. He said that Viet Cong had been killed.

61. Mr Walker was part of an engineer splinter teams of which accompanied the Infantry led reconnaissance-in-force fighting patrol, to clear safe lanes for the infantry to seek out and destroy Viet Cong bases in the heavily mined mountains.

62. Mr Walker said that the particular nine to ten inch safe path he was clearing on 22 March 1968 had never been cleared before and he had not been in that area.

### **First explosion - Richardson and Fox**

63. Immediately after the first explosion that severely wounded Private Richardson and Corporal Fox, Mr Walker commenced clearing a safe lane to the two casualties to render first aid and assist with their evacuation.

64. Mr Walker said that Private Coles was five metres behind him providing overwatch cover against potential enemy snipers during this task when Private Coles initiated a second mine which killed him instantly and wounded Second Lieutenant Appelbee. Mr Walker was blown forward onto a dead tree.

65. Mr Walker said that to retrace his footsteps to Private Coles, he largely did not have to 'prove' the ground as he could follow the same path he had previously cleared.

66. Mr Walker then continued the clearance task to Private Richardson and Corporal Fox. He was amazed at how much the fire had begun to take hold around Private Coles and he was worried about the potential for explosives on him to be 'cooked off' and explode as were the other members of the patrol.

67. Mr Walker then went back to Private Coles. He could not recall if he did so over 'proven', 'unproven' or 'half proven' ground.

68. Mr Walker said that he had to 'step up' as the other combat engineer in his splinter team was frozen with fear and did not assist at all, and the second splinter team of combat engineers called into help were both killed enroute to his location by a third mine explosion. Incidentally, these were the two other unwounded men from the standing patrol incident in Operation COBURG on 18 February.

69. Mr Walker said that he had concerns that the mine explosions would alert any nearby enemy, but fortunately none showed themselves.

70. In order to use the fire extinguisher from the helicopter, as well as apply water from his own water bottles to the fire on Private Coles, he had to get close to

him. Mr Walker said that he was very worried that the munitions Private Coles was carrying might explode underneath him, killing him on impact and potentially others around him in close proximity.

71. It took about four hours to complete the mine clearance task and lead the wounded and dead back to base safely. This took its toll on him mentally.

72. In closing Mr Walker reiterated that in each operation, *'it was not that others couldn't have done what [he] did, it's just that they chose not to'*.

### **Colonel Kemp's evidence and submissions**

73. Colonel Kemp submitted<sup>28</sup> strongly in favour of Mr Walker receiving the MG.

74. He said that Mr Walker was the only soldier he nominated for an award of the Military Medal during the entire Vietnam War. He said that Mr Walker was a 'legend in the Squadron' who had gone 'above and beyond' what was expected of him and that he was a 'leader amongst the pack'.

75. In relation to Operation COBURG, Colonel Kemp stated that Mr Walker's act of gallantry was more than just his decision to lead the recovery mission as Defence asserted. It was also his earlier decision to go back to the FSB, whilst it was under enemy fire, and whilst trying to negotiate friendly fire.

76. In relation to Operation PINNAROO, Colonel Kemp submitted that Mr Walker had in effect done the job of four combat engineers, noting that one had frozen in fear and two had been killed, leaving only Mr Walker to deal with the clearance of safe lanes to recover the wounded and dead, the outbreak of the fire and possible explosion hazard presented by Private Coles' munitions, and the subsequent completion of the essential mine clearance and evacuation task, and leading others to eventual safety.

77. Colonel Kemp stated that Mr Walker had clearly faced 'hazardous circumstances' when he had acted bravely and gallantly on 18 February 1968 and 22 March 1968 in Operations COBURG and PINNAROO respectively. He had done more than just perform acts of gallantry which were worthy of recognition because he had performed those acts in hazardous circumstances. To Colonel Kemp, Mr Walker was therefore deserving of the MG, most akin to the Imperial award of Military Medal, for which he put him forward 54 years ago.

78. He submitted in relation to the Defence submission of 29 July 2022, the eligibility criteria had to be applied with reality in mind. These were not generic circumstances. He submitted that the Task Force Commander, Brigadier Hughes, was best placed to provide

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<sup>28</sup> Colonel Kemp also introduced a bundle of photographs showing the terrain of the Long Hai Hills and various mines (marked Exhibit 1).

an assessment of Mr Walker's actions, as opposed to Major General MacDonald, who had less of an appreciation for the hazardous nature of service in the Long Hai Mountains.

79. **Defence submissions.** Air Vice-Marshal Quaife maintained and reiterated the submissions advanced in the Defence report and asserted that it had not been established that Mr Walker met the eligibility criteria for the SG or the MG. He maintained that Mr Walker had however acted gallantly in two discrete instances.

80. **Operation COBURG.** The positive decision by Mr Walker to lead the recovery mission from the FSB on 18 February 1968 was an act of gallantry. He submitted that the context of Mr Walker's task to return to rescue his wounded comrades and his acceptance of the task was incredibly difficult, and gallant, given what Mr Walker had just experienced. This included leaving the relative safety of the FSB.

81. However, in the Defence view, the recovery mission was not completed in 'hazardous circumstances'. The recovery mission was in the end uneventful as enemy fire was said to be on the wane and he and the patrol were not confronted with any identifiable hazardous circumstances. Air Vice-Marshal Quaife argued that not knowing what would occur on the patrol did not make it 'circumstances of great peril' for the SG nor 'hazardous circumstances' for the MG.

82. Defence was questioned as to why it did not also accept that Mr Walker's positive decision to leave the wounded and killed in action and return to the FSB under enemy fire and whilst negotiating friendly fire was an act of gallantry. Defence distinguished between returning to the FSB from patrol and leaving the relative safety of the FSB to go out again. It was the latter which was considered a gallant act and not the former.

83. **Operation PINNAROO.** To Defence, the second act of gallantry was Mr Walker's persistence with his mine clearance role over a period of some four hours in circumstances complicated by the requirement to extinguish a fire posing a risk from highly explosive materials. It said that it was Mr Walker's additional element of courage which constituted gallantry.

84. However, Defence submitted that these acts of gallantry were not performed in hazardous or perilous circumstances. Defence stated that there was no enemy fire. Further, Defence submitted that Mr Walker's normal role as a sapper included mine clearing. Defence stated that the circumstances presented by that particular minefield were no more hazardous to Mr Walker than other minefields cleared by Australian sappers. The fire element was, in Defence's view, a complicating factor but not a hazardous circumstance.

85. Defence submitted that it was not the magnitude of the horror and the deaths which was the measure of his gallantry, but rather Mr Walker's response to it on those two occasions.

86. Defence submitted, therefore, that Mr Walker performed acts of gallantry worthy of recognition and therefore the Commendation for Gallantry is appropriate (which effectively equates to his MID).

### **Tribunal Consideration**

87. **Findings in relation to Mr Walker's actions.** Having reviewed the evidence, the Tribunal was reasonably satisfied on the basis of his evidence and that of Majors Perry and Appelbee and Colonel Kemp that Mr Walker acted as he claimed in relation to both Operation COBURG and Operation PINNAROO. Defence did not contest Mr Walker's actions, and – critically - readily acknowledge that some of his actions throughout Operations COBURG and PINNAROO were gallant. However, the Defence position is that the actions for which Mr Walker received his MID were not conducted in either hazardous or perilous circumstances, a view that is contested by Mr Walker and Colonel Kemp.

### **Application of the gallantry criteria**

#### **The Medal for Gallantry**

88. **Contemporary Gallantry Awards.** Australian service personnel received honours and awards under the Imperial system until February 1975 when the Government introduced the Australian system. The two systems, the Imperial and the Australian, then operated in parallel until October 1992 when the Government announced that Australia would no longer make recommendations for Imperial awards.<sup>29</sup> This means that only contemporary decorations may be considered. The eligibility criteria for gallantry awards in the Australian system are governed by Gallantry Decorations Regulations.<sup>30</sup>

89. **Gallantry Decorations.** The Star of Gallantry; the Medal for Gallantry and the Commendation for Gallantry were established as Gallantry Decorations by Letters Patent on 15 January 1991 for the purpose of:

*'according recognition to members of the Defence Force and certain other persons who perform acts of gallantry in action'.*

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<sup>29</sup> Prime Minister of Australia Media Release 111/92 dated 5 October 1992.

<sup>30</sup> *Commonwealth of Australia Gazette No. S25 – Gallantry Decorations Regulations* - dated 4 February 1991.

90. The honours are governed by the Regulations set out in the Schedule, as amended in 1996:

*Conditions for award of the decorations*

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

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

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

*(3A) A decoration referred to in regulation 3 may be awarded for an act of a kind mentioned in relation to the particular decoration, although the act did not occur in action, if it occurred in circumstances similar to armed combat or actual operations and those concerned were deployed under military command.*

....

***Making of awards***

*7. Awards of a decoration shall be made by the Governor-General on the recommendation of the Minister.<sup>31</sup>*

91. **Gallantry.** The Tribunal has previously noted that all the gallantry decorations accord recognition for individuals ‘who perform acts of gallantry in action’. Whilst ‘in action’ is a relatively straight forward concept, ‘gallantry’ is an abstract term, which is not defined in the Regulations. Various dictionary definitions such as ‘dashing courage; heroic bravery’;<sup>32</sup> and ‘courageous behaviour, especially in battle’;<sup>33</sup> are largely circuitous and unhelpful. Some countries have attempted to differentiate between ‘bravery’ and ‘gallantry’; defining the later as recognition of military personnel who carry out acts which put their lives at risk while involved in operational service; whilst ‘bravery’ is defined as saving or attempting to save the life of another person in the course of which they place their own life at risk.<sup>34</sup> Again this is largely unhelpful in defining gallantry in the context of the Australian Honours and Awards system.

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<sup>31</sup> Commonwealth of Australia Gazette No. S420 – Amendment of the Gallantry Decorations Regulations – dated 6 November 1996.

<sup>32</sup> The Macquarie Dictionary on-line accessed 8 August 2020.

<sup>33</sup> The Oxford Dictionary on-line accessed 8 August 2020.

<sup>34</sup> <http://medals.nzdf.mil.nz/category/d/index.html>.

92. The Tribunal has previously observed, that there is an expectation that all soldiers in battle conducting themselves in accordance with their training, will be acting bravely. The Tribunal has also observed that gallantry requires a higher standard of conduct than bravery and usually a special and additional element of courage, fearlessness, daring or heroism will have been demonstrated, and that what amounts to an ‘act of gallantry’, necessarily varies according to the individual circumstances of each action, and depending on many factors, including the level of threat, the person’s training, role and responsibility, the risk to the individual and/or the group, and the consequences of undertaking, or not undertaking, the particular act.

93. The Tribunal has previously stated that the concept of gallantry is greater than collective or individual acts of bravery and above and beyond what was expected of an individual or group who were bravely doing what they were trained to do or expected to do as part of a role, rank or responsibility.

94. **Was Mr Walker gallant?**<sup>35</sup> The Tribunal notes that Defence has acknowledged that Mr Walker displayed gallantry on two occasions. However, the Tribunal has identified a series of actions by Mr Walker which it considers to be gallant and should be reviewed in chronological order.

95. Having reviewed the submissions and eye witness accounts, the Tribunal makes the following observations in relation to Mr Walker’s actions on 18 February 1968 (OP COBURG) and 22 March 1968 (OP PINNAROO):

- a) **OP COBURG.** Mr Walker made the decision to leave the wounded and dead at the standing patrol location to raise help at FSB Andersen while the FSB was under attack. He faced enemy interdiction during his perilous return as well as friendly fire as he approached the FSB perimeter.
- b) **OP COBURG.** After reaching the relative safety of the FSB and advising his superiors of what had occurred, Mr Walker was convinced to lead a rescue patrol from the FSB at night to the standing patrol location to recover the dead and wounded while the FSB was still under attack and during the hours of darkness. The Tribunal notes that Defence considers Mr Walker’s action on this occasion was an act of gallantry.
- c) **OP PINNAROO.** During an Infantry led reconnaissance-in-force patrol Mr Walker provided immediate and singlehanded response to a mine explosion that seriously wounded Private Richardson and Corporal Fox. He commenced clearing a safe lane to facilitate first aid and their evacuation.
- d) **OP PINNAROO.** Mr Walker responded to a second mine explosion which killed Private Coles, singlehandedly, including covering ground that was cleared and other ground which was not cleared, to extinguish the fire on Private Coles which posed a great risk from explosive materials on Private Coles’ body. The Tribunal

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<sup>35</sup> *Commonwealth of Australia Gazette No. S25 – Gallantry Decorations Regulations* - dated 4 February 1991.

notes that Defence considers Mr Walker's action on this occasion was an act of gallantry.

- e) **OP PINNAROO.** Mr Walker then persisted diligently in the challenging mine clearance task singlehandedly for four hours to facilitate the evacuation of all killed and wounded and the safe return to the base camp of the remainder of the patrol.

96. The Tribunal is firmly of the view that Mr Walker's decision, in the immediate aftermath of the mortar attack on the standing patrol position, to single-handedly return to the FSB to raise help and then to be convinced to lead a rescue patrol back to the standing patrol's location to recover the dead and wounded were both acts of gallantry.

97. The Tribunal is also firmly of the view that Mr Walker's persistence over an extended period of four hours to singlehandedly clear safe lanes in a nuisance minefield to recover wounded and dead personnel from the battlefield and safely return to the base location after a series of mine incidents disrupted their fighting patrol, as well as responding to the threat of fire on one of the deceased soldiers, were all acts of gallantry.

98. The Tribunal observed that in its assessment, Defence failed to acknowledge that this was not a conventional or marked minefield but a nuisance minefield with randomly sowed mines planted by the enemy to cause maximum disruption and casualties to the allied forces. Clearing safe lanes was an extremely hazardous and dangerous task even for trained combat engineers.

99. Further, it is the Tribunal's considered opinion that on each occasion during operations COBURG and PINNAROO, Mr Walker went above and beyond what was expected of him as a soldier of his rank and experience in order to save the lives of his seriously wounded colleagues. Mr Walker placed the welfare of the injured well above any concerns for his own, and that these selfless acts required real courage and demonstrated genuine gallantry.

100. **Was Mr Walker 'in action'?** There is no dispute that Mr Walker was 'in action' during both incidents under consideration during operations COBURG and PINNAROO. He was involved in armed conflict in either close proximity to or under fire of an adversary.

**Were Mr Walker's gallant acts performed 'in hazardous circumstances'?**

101. The Tribunal considered each gallant act separately.

102. The phrase 'hazardous circumstances' is not defined in the Regulations.

103. In *Soldier P (re Soldier J) and the Department of Defence*, the Tribunal considered how one should distinguish an act of gallantry in action attracting the Commendation from an act of gallantry in action in hazardous circumstances attracting the MG. The Tribunal considered that the term was intended to take into account the particular circumstances of a soldier in action and required that the hazardous circumstances be considered in the context of relevant combat situation.<sup>36</sup> It said:

*... there is a risk associated with simply being in an operational area. That risk is increased significantly when engagement with the enemy occurs. But that risk is present for everyone in the area and it could be said that the level of risk when engaged in direct action with the enemy provides a standard or norm for that situation. To satisfy the meaning of hazardous circumstances in the criteria for the award of the MG, the level of risk must be greater than the norm.*

104. **OP COBURG.** Mr Walker's decision to leave the wounded and killed at the standing patrol location following the surprise mortar attack on 18 February 1968 to raise help at the FSB under enemy fire and facing friendly fire during Operation COBURG was done in 'hazardous circumstances'.

105. In these circumstances, the Tribunal is satisfied that Mr Walker's actions involved a level of risk that exceeded the standard or the norm of risk inherently involved in being 'engaged in direct action with the enemy'. In determining that this act was conducted in hazardous circumstances, the Tribunal is mindful that Mr Walker returned to an FSB that was still under attack, that he was unaware of the size, disposition or capabilities of the attacking force throughout this return leg and that he could have reasonably expected to have been engaged by these same forces at any stage. The fact that dead enemy soldiers were found close to Mr Walker's ingress route the next morning speaks to the proximity of enemy forces in this sector. The Tribunal considers that, by virtue of being an isolated, single soldier without the ability to synchronise supporting fire from any source, the hazards confronting Mr Walker were more significant than might be the case when operating as part of a mutually-supporting tactical formation, the 'standard' by which engagement with the enemy typically occurs. Importantly, the Tribunal does not consider that the absence of any such attack on Mr Walker, for whatever reason, makes this environment any less hazardous.

106. The Tribunal also notes that the decision to return to a base that had been subject to a surprise attack and that was still under attack, at night, and which obviously included a requirement to negotiate a perimeter defended by potentially 'trigger-happy' soldiers, without communications equipment and the obvious means of identifying himself as a friend, qualifies as a 'hazardous circumstance'. The Tribunal believes that Mr Walker was just as at risk from 'blue forces' as he was from the enemy, and that there was a *bone fide* risk he could have been injured or killed by 'friendly' fire.

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<sup>36</sup> *Soldier P (re Soldier J) and the Department of Defence* [2014] DHAAT 27 (4 July 2014).

107. We also note that the 1968 draft citation states that *‘Despite the **hazards** involved [Sapper Walker] successfully reached the base and led a party back to bring in the casualties.’*

108. Mr Walker’s decision to lead the recovery mission from the FSB to the wounded and killed after returning to the FSB to seek help was done in ‘hazardous circumstances,’ as part of the FSB perimeter was still under attack at that time and the recovery patrol was conducted during the night.

109. In these circumstances, the Tribunal is satisfied that Mr Walker’s actions involved a level of risk that exceeded the standard or the norm of risk inherently involved in a normal recovery mission or expected of a soldier of his rank and experience.

110. **OP PINNAROO.** Mr Walker’s actions during an infantry led reconnaissance-in-force patrol on 22 March 1968 in the Long Hai mountains during OP PINNAROO were all performed in hazardous circumstances. This included an immediate and singlehanded response to a mine explosion in a nuisance minefield, designed to cause maximum disruption and casualties to the allied forces that seriously wounded two soldiers, and then the commencement of clearing a safe lane to facilitate first aid and their evacuation. It also included Mr Walker responding to a second mine explosion, which killed another soldier covering ground that was cleared and other ground that was not cleared to extinguish a fire on that dead soldier, which posed a great risk from explosive materials on that dead soldier’s equipment. Finally, Mr Walker’s dogged persistence to singlehandedly complete the challenging mine clearance task over four hours to reach the casualties and facilitate their first aid and evacuation was conducted under hazardous circumstances.

111. In these circumstances, the Tribunal is satisfied that Mr Walker’s actions involved a level of risk that exceeded the standard or the norm of risk inherently involved in any mine clearing task. The fire was not just a complicating factor, it was a hazardous circumstance. There is a reasonable case to suggest that the actions by Mr Walker in each of these two operations in isolation may have warranted recognition for gallantry with a Military Medal at the time, or retrospectively with the Medal for Gallantry.

112. **Were Mr Walker’s gallant actions conducted ‘in circumstances of great peril’?** The Tribunal considered that Mr Walker’s gallant actions did not occur in circumstances when it could be said that he and/or the group were threatened to such an extent that there was a distinct probability that the group would have been overwhelmed by the enemy<sup>37</sup> nor could it identify any other circumstances which could reasonably be described as greatly perilous.

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<sup>37</sup> *Hanuszewicz and the Department of Defence re Cameron* [2019] DHAAT 08 (23 May 2019).

## **Summary**

113. The Tribunal has determined that Mr Walker performed a series of gallant acts, during OP COBURG on 18 February 1968 and OP PINNAROO on 22 March 1968 which all occurred in hazardous circumstances. The Tribunal also notes that Mr Walker went above and beyond what was expected of him as a soldier of his rank and experience in order to save the lives of his seriously wounded colleagues. Mr Walker placed the welfare of the injured well above any concerns for his own safety, and that these selfless acts required real courage and gallantry.

114. Accordingly, the Tribunal concludes that Mr Walker meets the eligibility criteria for the award of the Medal for Gallantry.

115. Having reached this conclusion, the Tribunal suggests that, if its recommendation is accepted by the Minister, Defence should compose an appropriate citation that accurately reflects the events and the circumstances under which they occurred. The Tribunal also suggests that Defence may seek to confer with the original nominator, Colonel Kemp, in doing so.

## **Tribunal decision**

116. In light of the above, the Tribunal has decided to recommend to the Minister that:

- a) the decision of the Chief of Army, Lieutenant General Rick Burr AO DSC MVO to refuse to recommend Mr Murray Walker for a gallantry award should be rejected; and
- b) the Minister should instead recommend to the Governor-General that Mr Walker be awarded the Medal for Gallantry.