



Australian Government

Defence Honours and Awards Appeals Tribunal

Jensen and the Department of Defence [2026] DHAAT 3 (27 January 2026)

File Number(s) 2024/024

Re **Lieutenant Colonel Anthony Howard Jensen MG (Retd)**
Applicant

And **The Department of Defence**
Respondent

Tribunal Mr Stephen Skehill (Presiding Member)
Brigadier Dianne Gallasch AM CSC (Retd)
Commodore Vicki McConachie CSC RAN (Retd)
Major Gary Mychael OAM CSM (Retd)

Hearing Date 17 October 2025

Appearances Lieutenant Colonel Jensen, Applicant

Lieutenant Colonel George Hulse OAM (Retd)
Mr Alan Parr MG OAM
Mr Brian Buzzard
Colonel Michael Bindley AM (Retd)
(For the Applicant)

Ms Allison Augustine, Director
Directorate of Honours and Awards, Defence
Mr Tyson Pan, Assistant Director, Honours and Recognition
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Mrs Jen Robinson, Manager, Honours Reviews
Directorate of Honours and Awards, Defence
(For the Respondent)

DECISION

On 27 January 2026, the Tribunal decided to recommend to the Minister that he should affirm the decisions that Lieutenant Colonel Jensen not be recommended for either the Victoria Cross for Australia or the Distinguished Service Cross.

CATCHWORDS

DEFENCE HONOUR – Victoria Cross for Australia - Distinguished Service Decorations – Distinguished Service Cross – Medal for Gallantry already awarded - 1st Battalion, the Royal Australian Regiment – Fire Support Base Coral – Mortar Platoon - South Vietnam

LEGISLATION

*Defence Act 1903 – ss 110T, 110V (1), 110VA, 110VB (1)
Defence Regulation 2016 – Part 6, S35, Defence Honours,*

Victoria Cross for Australia

Commonwealth of Australia Gazette S25 of 4 February 1991, Victoria Cross for Australia, Letters Patent and Regulations dated 15 January 1991. Revoked by CAG G00965 of 2017.

Commonwealth of Australia Gazette G00965 of 28 August 2017, Victoria Cross for Australia, Governor-General Determination dated 6 September 2017.

Commonwealth of Australia Gazette S25 dated 4 February 1991, Distinguished Service Decorations, Letters Patent and Regulations dated 15 January 1991.

REASONS FOR DECISION

Introduction

1. The Applicant, Lieutenant Colonel Anthony Jensen MG (Retd), seeks review of decisions by the Department of Defence (Defence) to refuse to recommend him for either the Victoria Cross for Australia for his actions on 13 May 1968 or the Distinguished Service Cross for his service throughout his tour of duty in Vietnam between 1968 and 1969. His actions during the Battle for Fire Support Base Coral in Vietnam on 13 May 1968 were recognised with the Medal for Gallantry in 2020. That recognition was brought about following a review in the Tribunal, lodged by Lieutenant Colonel George Hulse OAM (Retd).¹

2. On 27 June 2024, Lieutenant Colonel Jensen wrote to the Chief of Army, Lieutenant General Simon Stuart AO DSC, seeking the Victoria Cross for Australia for his actions on 13 May 1968 and the Distinguished Service Cross for his actions throughout his tour of duty in Vietnam. This application was referred to Defence's Directorate of Honours and Awards which responded to Lieutenant Colonel Jensen on 18 November 2024 stating that *Defence considers that your actions on 13 May 1968 have been adequately assessed and recognised with the Medal for Gallantry*. Defence also referred to the fact that in 2023 the Chair of the Tribunal had, acting under the power set out in section 110VC of the *Defence Act 1903* (the Act), dismissed a 2022 application for review of Lieutenant Colonel Jensen's eligibility for the Distinguished Service Cross which had been lodged by Lieutenant Colonel Hulse. That application, which was confined to Lieutenant Colonel Jensen's action on 13 May 1968, was dismissed on the ground that the question of Lieutenant Colonel Jensen's service on that date had already been adequately reviewed.

3. On 18 December 2024, Lieutenant Colonel Jensen made application to the Tribunal seeking review of Defence's decision of 18 November 2024.

Tribunal Jurisdiction

4. Pursuant to section 110VB (1) of the Act 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 section 110V (1) and includes a decision made by a person within Defence to refuse to recommend a person for a defence honour or award in response to an application. Part 6 of the *Defence Regulation 2016* defines defence honours as being those set out in Section 35, which include the Victoria Cross for Australia and the Distinguished Service Cross. Therefore, the Tribunal has jurisdiction to review the above decisions of Defence.

¹ See *Hulse and the Department of Defence re: Jensen* [2020] DHAAT 15.

5. Having considered the application and the provisions of section 110VC of the Act, the Chair of the Tribunal elected not to dismiss this latest application for the following reasons:

- a) this application was made by Lieutenant Colonel Jensen himself, and not by someone seeking to act on his behalf or for his benefit (as was the case previously);
- b) the 2022 application for review brought forward by Lieutenant Colonel Hulse that was dismissed in 2023, sought the Distinguished Service Cross for the events of the 13 May 1968, which were recognised by the Medal for Gallantry recommended by the Tribunal;
- c) this application sought different outcomes - the Victoria Cross for Australia (which was not expressly considered by the earlier Tribunal) and the Distinguished Service Cross for the entirety of Lieutenant Colonel Jensen's service in Vietnam, not just for a single day; and
- d) the application contained some new material not previously considered by the Tribunal.

6. In undertaking this review, the Tribunal was bound by the eligibility criteria that governed the making of the reviewable decision in 2024, as required by section 110VB (6) of the Act. In accordance with section 110VB (1) of the Act, as the Applicant sought a defence honour, the Tribunal did not have the power to affirm or set aside the decision, but was empowered make any recommendations to the Minister that it considered appropriate.

Conduct of the Review

7. In accordance with its Procedural Rules, on 6 January 2025 the Tribunal wrote to the Secretary of the Department of Defence informing him of Lieutenant Colonel Jensen's application for review. The Tribunal requested a merits-based assessment of Lieutenant Colonel Jensen's actions against the eligibility criteria for the Victoria Cross for Australia and the Distinguished Service Cross, and a report on the material questions of fact and reasons for the decision to refuse the original application. The Tribunal also requested that the Secretary provide copies of documentation relied upon in reaching the decision and any other relevant documents.

8. On 31 March 2025, the Director of Honours and Awards in Defence provided a report on behalf of Defence. The report recommended that the decision to not further recognise Lieutenant Colonel Jensen be affirmed.

9. The Defence report was forwarded to Lieutenant Colonel Jensen for comment on 31 March 2025. Lieutenant Colonel Jensen provided his comments on 30 May 2025.

10. The matter was heard on 17 October 2025. The hearing was attended by Lieutenant Colonel Jensen, who gave evidence on his own behalf, and witness testimony was provided by Lieutenant Colonel Hulse, Mr Alan ‘Jack’ Parr MG OAM, Mr Brian Buzzard and Colonel Michael Bindley AM (Retd). During and at the conclusion of the hearing Lieutenant Colonel Jensen tendered a number of documents, including a drawing of the position occupied by himself and Mr Parr on 13 May 1968, his opening and closing addresses to the Tribunal, and other documents from Mr Parr, Mr Buzzard and Lieutenant Colonel Hulse in support of the application for review. These were all provided to Defence after the hearing, and it advised that it wished to make no further submission in relation to the application for review.

Lieutenant Colonel Jensen’s service

11. Lieutenant Colonel Jensen enlisted in the Australian Army on 24 January 1963 and on 14 December 1966 was appointed as a Lieutenant and posted to 1st Battalion, the Royal Australian Regiment. His service record indicates that he remained with the 1st Battalion until 1 July 1971 when he was posted to the Infantry Centre where he served until his promotion to Major on 4 February 1974. As a Major he had a number of staff, regimental and instructional appointments before promotion to Lieutenant Colonel on 21 July 1980. He left the Army on 26 February 1990.²

12. For his service in the Army, Lieutenant Colonel Jensen has been awarded the:

- Unit Citation for Gallantry (CORAL/BALMORAL);
- Medal for Gallantry;
- Australian Active Service Medal 1945-75 with Clasp ‘VIETNAM’;
- Vietnam Medal;
- Australian Service Medal 1945-75 with Clasp ‘SE ASIA’;
- Defence Force Service Medal with first and second Clasp;
- National Medal;
- Australian Defence Medal;
- Republic of Vietnam Campaign Medal; and
- Republic of Vietnam Cross of Gallantry with Palm Unit Citation

The action of 13 May 1968 and support for recognition

13. As noted earlier in this report, Lieutenant Colonel Jensen’s service on 13 May 1968 was the subject of a previous review in the Tribunal. In this report, the

² Defence Submission – Review of Eligibility for the Distinguished Service Cross dated 17 March 2020.

Tribunal does not seek to repeat all of the detail about the action on 13 May 1968 and the recommendations or nominations for recognition made as a result, and refers the reader to the report of that earlier review (*Hulse and the Department of Defence re Jensen [2020] DHAAT 15*). Rather, the Tribunal focusses instead on the key points of the evidence before the previous Tribunal and, more particularly, the further evidentiary material brought forward in the course of this application in relation to both the action of 13 May 1968 and the balance of Lieutenant Colonel Jensen's service in Vietnam in 1968 and 1969, and the arguments put in support of the outcomes sought by Lieutenant Colonel Jensen.

14. **Official History.** Noting the many historical accounts of the action of 13 May 1968, personal accounts and various records of interviews with witnesses, the Tribunal was satisfied that the official history provides a reasonably accurate description of the action upon which to base an assessment of Lieutenant Colonel Jensen's actions on that date.³ The Tribunal acknowledges that some details of the official history have been disputed, however in its view these are not material to an assessment of Lieutenant Colonel Jensen's actions in relation to recognition. An edited description from the official history follows which provides context to the action as it applies to Lieutenant Colonel Jensen:

... the mortar base plate position was located in an open area covered with metre high grass and dotted with small trees. It was adjacent to the gun position and on the outer edge of the base, facing to the north and east. The platoon was separated from the battalion command post and protection troops by approximately 200 metres of open ground.

Two mortars had remained at Nui Dat as a normal procedure to assist in base protection, leaving four mortars for the platoon. The platoon commander, Captain McNally was stationed at the battalion command post and Lieutenant Jensen, the second-in-command of the platoon was in charge of the mortar position ... the only protection for the mortars came from the scattered companies of 1 RAR but they were up to three kilometres away and had large gaps between them. They could be easily by-passed by an attacking enemy. Before last light, efforts were made to coordinate defences and tie in mutual support between the sub-units in the fire support base but arrangements were still incomplete as night fell ... individual shell scrapes less than one metre deep were prepared in the mortar position, some having ground sheets erected over them. Mortar pits were dug to almost one metre.

... by midnight the rain had stopped ... from that time sporadic incidents occurred which only later the Australians realised were enemy reconnaissance parties making preparations for their main attack. At five minutes after

³ Ian McNeill and Ashley Ekins, *On the Offensive: The Australian Army in the Vietnam War 1967-1968*, Allen & Unwin 2003, Chapter 12 - *Battle at Fire Support Base Coral, April – May 1968*.

midnight, now 13 May, two enemy probed the 1 RAR mortar position ... at about 3.30am rocket and mortar fire began falling on FSB Coral, the heaviest concentration falling on 102 Field Battery and the 1 RAR Mortar Platoon. This intense fire lasted for five minutes. A ten-minute pause followed. Then, heralded by signal flares, North Vietnamese troops rushed the Australian position. The battle would continue in close quarters fighting for over one hour.

Lieutenant Jensen was resting in one of two shell scrapes dug side by side when the enemy bombardment started. The other was occupied by Private Jack Parr, a national serviceman and platoon signaller. They erected a 'hootchie' over the scrapes with their groundsheets. Donning basic webbing they collapsed the shelter so they could observe and direct fire and dashed across to the mortar command post. ... at this moment Private Bailey, second-in-command of a mortar section reported that 'there are about 400 enemy about 50 yards away'.

Jensen, who remained in telephone contact with the 1 RAR command post throughout the night reported this and indicated that the enemy had reached the perimeter. Fire from the New Zealand 161 Battery was falling at an intense rate outside of the perimeter of the base. Shouting his commands, Jensen gave the order to fire his own mortars on maximum elevation and over open sights, but it was too late. He then called out to his platoon to stay under ground because he was bringing in fire from the 3 RAR mortars ...

It was now impossible for Jensen to get his men out. Already they had taken wounded who would be difficult to move. They had no time to secure the mortars before leaving and the enemy had started firing across the area. The gun position was 50 metres to their rear and moving back would expose the men further and crowd the gunners; if they stayed where they were, they still provided the guns with some flank protection. As the first attacking wave came in, the enemy was quickly on them, firing into the position and at any shelters still standing. Jensen saw one of the assaulting troops fire a rocket-propelled grenade into the pit he had just left, blowing his pack to pieces.

The main force of the attack, which consisted of several enemy companies, came from the north-east, through the mortar platoon and then on to 102 Field Battery. The initial assault overran the mortars, the enemy flank moving through the position at speed ...

Shortly before the main attack, however, the Battery had fired a mission to the north and the gunners were still standing at their posts. 'As luck would have it' said Jensen, 'the guns were then facing directly into the line or direction of the assault'. As the enemy approached, 'the guns then commenced the firing over open sights which tended to break up the assault'. High explosive ammunition and splintex rounds containing thousands of small darts were fired across the

front of the mortar platoon ... however, as the enemy fought over possession of the mortars, Jensen was faced with the possibility of his platoon being annihilated. Already two men who had tried to dash from their pits had been struck down and killed. In desperation, Jensen saw the only option open to him was to direct the fire ... onto his own position. He had been providing very clear reports of the situation and Bennett [the Commanding Officer] had no compunction in agreeing to the fire missions. Several times Jensen called for such fire ... 'stay down', Jensen shouted to his platoon each time through the din, 'splintex coming in'. He would then immediately call for fire and the bangs quickly followed ...

The enemy were well-trained, well-equipped and highly motivated, and displayed outstanding bravery and determination, but they could not prevail in the face of the Australian's abundant fire support and the courageous way in which they fought – despite their hasty preparation and only partially coordinated defence. By 4.30am the enemy main attack had begun to falter. They withdrew into the rubber plantation in the north-east ...

The mortar platoon took the heaviest losses, with five soldiers killed and eight wounded from a total strength of eighteen men ...

15. **Lieutenant Colonel Jensen's previous evidence.** At the Tribunal's 2020 hearing Lieutenant Colonel Jensen gave evidence which clarified and expanded on his actions and what transpired on the morning of 13 May 1968.⁴ An edited record of that evidence follows:

When I arrived at Coral, and we got in there pretty late, Hugh McNally, the Platoon Commander met me and took me over to where we were going to be alongside the guns. He said, 'I'm sorry you're over here on the perimeter. We'll see if we can sort that out next time, but D Company 3 RAR are over there somewhere to the west, south-west'. He then left me to it and I took up my responsibilities of siting the platoon. Each mortar base plate is commanded by a corporal and each section of mortars is commanded by a sergeant. The rest of the platoon such as the platoon commander and mortar fire controllers who are with the rifle companies were not there. I laid the mortar line out with each mortar about 10 metres apart and I set up a command post between them and central. We covered an area of about 30 metres and we were about 30 metres in front of 102 Field Battery's Number 5 Gun.

I then went looking for the Gunnery Positioning Officer [Lieutenant Ahearn] because I had two machine guns with me and was looking for somewhere to put them because we needed to coordinate our defence. The actual siting of the

⁴ Lieutenant Colonel A. Jensen, Oral Evidence, Public Hearing, Canberra, 18 June 2020 See Hulse and the Department of Defence re: Jensen [2020] DHAAT 15.

machine guns was the responsibility of the Artillery Regimental Second in Command but we did not know where he was so Lieutenant Ahearn and I sited our respective machine guns. He had already sited two machine guns in front of the artillery so I went ahead and sited my machine guns. I make this point to illustrate that I was the commander - I sited the machine guns and took the full responsibility for where they were going as it was me who was going to have to fight them in the event that something happened. I then got the soldiers digging and got shell scrapes in and all that sort of thing.

... we were outnumbered by about 20 to one on the mortar line, I could see the enemy coming in and then Hickey told me there are about 400 of them and I could see nothing wrong with his observation. They covered right across the front of the guns as well as the front of us. I could see a couple of waves of enemy from gunfire and flashes and I did a quick appreciation as to what I had – I had the guns to support me and 161 Battery and the 3 RAR mortars. And I had my own diggers.

As I was arriving at the command post, an RPG was fired into the sleeping bay behind us and there were a couple of others going off around me. I worked out that there was just no place to go. I had the four mortars and 70 rounds of mortar ammunition per tube. I couldn't afford to leave those to the enemy.

At this stage I was aware of a couple of casualties and I heard Jack giving a sitrep on the mortar net as to what was going on. I got onto the battalion command net and told them what was happening, they kept asking me to 'say again, repeat, are you sure'. When I had convinced them there was something going on, I asked Jack to send the fire orders through to get the Final Protective Fire (FPF) target fired and I said 'fire the FPF, drop 100 and five rounds fire for effect'. From then on, I adjusted the fire and Jack would relay the commands. That's the way it worked all night - we had a lot of artillery come in. We also had 'Spooky' overhead, but basically Jack was on the fire support net so that's where the adjustments were being made. I was on the command net constantly telling the CO what was happening in our position.

At one-point Hickey, who was nearing the end of his second tour in Vietnam, said, 'we've got to get out of here, let's back up, we've got to go.' I said, 'no, stay where you are and get underground'. I'd already told them once that I was calling in fire on the position. I told them to stay in the shell scrape and engage whatever was above ground. Shortly after that he was shot.

16. In relation to indirect fire, Lieutenant Colonel Jensen confirmed that it had taken about 15 minutes for him to persuade the Commanding Officer, Lieutenant Colonel

P.H. Bennett, to approve fire onto his own position.⁵ He said he told Colonel Bennett that they were in *desperate stakes* and illustrated the *severity of our plight* by letting him know what the casualties were. He said that at that stage, he was aware that he'd lost two section commanders, another digger had probably been lost and he had a number of wounded. He then witnessed another soldier being killed by machine gun fire. He said that he called for fire and adjusted it onto his position and that this was being done for a considerable period of time and well before the use of splintex. He said that the mortars were firing at minimum range and when combined with the guns from 161 Battery, the effect on the ground was dangerous to his own troops. He also confirmed that he was adjusting other supporting fire including from aerial assets, all the while commanding his soldiers in their individual fight at close quarters.

17. Lieutenant Colonel Jensen said that at this time he was also in contact with (then) Second Lieutenant Ahearn at the gun position, but each time they shouted to each other they were engaged with machine gun fire. Lieutenant Colonel Jensen was also subjected to grenade attack with one landing right beside the command post parapet.

18. In relation to firing splintex, Lieutenant Colonel Jensen said that he didn't care what kind of fire he got as long as it was fire onto the position. He said it was the Commanding Officer who told him that he was *thinking of firing splintex over you, are you prepared to take casualties?*⁶ He said yes.

19. Lieutenant Colonel Jensen said that he was aware that Ahearn had been experimenting with splintex fuses and that when he was ready to fire, he told Lieutenant Colonel Jensen who ordered his troops to 'get underground, splintex coming in. Stay down. Stay down. Stay down.' He said they fired three times and each time put five rounds through the position. He said that:

*you heard it go overhead, there's a big swoosh and the next morning, you could see quite clearly, two of the mortars had the splintex imbedded in the barrels. Half the ammunition was contaminated. The radios alongside Jack and my head were both penetrated. The mortar cases had splintex in them.*⁷

20. In relation to whether or not the Anti-Tank Platoon fired splintex over the position Lieutenant Colonel Jensen said that *they were not in a position to fire onto our position, they could fire into the assaulting wave, but they couldn't fire on our position because they didn't have a line of sight.*

21. Noting that Lieutenant Colonel Hulse was seeking recognition for the 'leadership and gallantry of Lieutenant Jensen, under circumstances of extreme peril',

⁵ Lieutenant Colonel A. Jensen, Oral Evidence, Public Hearing, Canberra, 18 June 2020 See Hulse and the Department of Defence re: Jensen [2020] DHAAT 15

⁶ Ibid.

⁷ Ibid..

the 2020 Tribunal asked Lieutenant Colonel Jensen during the hearing whether or not he considered his actions to have been gallant. He said:

*We got through it and I remember thinking that we'd done well. Our training had shown to be effective. In relation to gallantry, humility makes it difficult for me to answer, but I think in the circumstances that I was facing at the time, a hazardous, perilous situation, and I wasn't sure how many of us were going to get out of it. Some or all of us were going to pay the ultimate price, and I'm guessing that at the very least it was gallant.*⁸

*As part of the whole process of deciding what I was going to do, I realised that there were going to be casualties and there was a fair chance that some or all of us were going to be killed. It was fairly perilous where we were and hazardous to say the very least. I thought that if we weren't killed then there was a good chance of being taken prisoner of war. I wasn't sure how we'd handle that. So, I then thought well, the other option is to get into it and fight and take somebody with me. And so, we got into it. But I was well aware that we were in a really hazardous situation and I had to do whatever I could to get us out of it. The only solution I had was to call the fire onto the position because at that stage, we had enemy all over the top of us.*⁹

22. **Previous evidence of other witnesses.** The closest witness to the action was Mr Parr who was the radio operator with Lieutenant Colonel Jensen. He said he was the only unwounded member of the mortar platoon to remain at Fire Support Base Coral after the first attack.¹⁰ He said he was personally no more than one metre from Lieutenant Colonel Jensen during the whole period of the attack and in his opinion, *Jensen should be considered for a bravery award.*

23. Mr Parr said:

... the human wave assault advanced through our position with Tony defending one side of the CP and me the other ... he made the level headed and wise decision to remain in this position with the little protection it gave ...in the best way he could under the circumstances, he ordered the men of his platoon to engage the enemy with their personal weapons and to remain in their pits. That was akin to saying that your best chances of survival was to stay and fight off the attacking enemy.

... as the enemy had completely overrun our position and there were many enemy amongst us, the situation was extremely dire and survival almost impossible ... his focus at this time was to ask for as much fire support as

⁸ See Hulse and the Department of Defence re: Jensen [2020] DHAAT 15.

⁹ Ibid.

¹⁰ Alan Parr Submissions, Attachment 2-5-7 to the original submission by Lieutenant Colonel Hulse.

possible. He was able to coordinate, via radio, a fire mission from 161 Battery initially onto a defensive fire task to the east; with corrections he was able to bring this artillery fire closer to where the battle was raging. ... some of the rounds fell in and around our position.

... Lieutenant Jensen from an exposed position was able to make verbal communication with 102 Battery situated about 30 metres to his rear. From this position he was able to bring direct fire of splintex from the 105mm guns into the platoon position ... whilst still under enemy fire Lieutenant Jensen was still able to direct fire support and render assistance to his wounded men.

... he was prepared to take friendly fire from the artillery and mortars on to his own position in order to survive the most perilous situation. That 13 men did survive, albeit with eight wounded, affirmed his judgement and decision to stay and fight.

24. Mr Parr concluded that:

Due to his personal bravery, leadership and calmness under enemy fire, and his ability to observe the enemy, assess the situation, issue orders and direct fire support, Lieutenant Jensen was able to bring maximum fire and very close fire support on to the assaulting enemy thus blunting and repelling the enemy attack. Although his platoon suffered heavy casualties it is a testament to his personal leadership and gallantry that the whole platoon was not annihilated in this dire and perilous situation.¹¹

25. Mortarman, Mr (then Private) Brian McInneny was shot in the left arm whilst firing at the enemy from his shell-scraper early in the assault.¹² He said:

... my left arm was completely numb and I dropped my rifle onto my knees. As I was feeling for where the wound was, I looked up and saw this NVA soldier standing above me. He fired his AK47 at me but the rounds impacted along a line in front of my feet. I could feel the impact of the bullets in the ground through my boots. I saw the NVA soldier line me up again for another burst of fire but before he could do that, Lieutenant Tony Jensen fired and shot him dead. There can be no doubt that Tony saved my life right there.

I then heard Tony shouting at us all to get down because he had called in fire and it was going to impact in and around the Mortar Platoon.

¹¹ See Hulse and the Department of Defence re: Jensen [2020] DHAAT 15.

¹² Ibid.

There is no doubt in my mind that had it not been for Tony's coolness and level-headed judgement on 13 May the whole platoon would have perished. ... His call for fire on top of the platoon position was the key to our survival.

I also can't believe that Tony was not decorated for his actions that day. It's hard to work out why his actions were ignored – it beggars belief.¹³

26. During the 2020 hearing, the Tribunal heard evidence from Colonel Bindley who was a Captain in 1968.¹⁴ In his capacity as the Officer Commanding Support Company, he was Lieutenant Colonel Jensen's Company Commander. He was located in his own company command post approximately 150 metres from the mortar line on the morning of 13 May 1968. He was monitoring the battle on the Battalion command net. He was asked at the 2020 hearing why he thought the Commanding Officer never recommended Lieutenant Colonel Jensen for recognition. He said that he and the Adjutant, Captain Davies were tasked to write up individual nominations for recognition. He said *I remember actually using the book on Victoria Crosses to get the right wording*. Colonel Bindley said that they drafted a nomination for a gallantry award for Lieutenant Colonel Jensen but he could not recall what level the award was as he thought that *levels were not included in those days*. He said they were asked to just write the citation and their understanding was that as it went up the chain, the appropriate level of award would be added.

27. Colonel Bindley said that he could think of no particular reason why Colonel Bennett would have said no to the recommendation particularly as he (Bindley) considered that Lieutenant Colonel Jensen's leadership of his men was *absolutely exemplary*. He said Lieutenant Colonel Jensen *had managed to get them to do what had to be done, and the fact that he reorganised that platoon without missing a beat was an indication of how good he was*.

28. Colonel Bindley said that there was no record of the citation that he drafted that he was aware of. He assumed that it had gone forward as an immediate nomination with others from the Battle for Fire Support Base Coral. He said that there were definitely immediate awards approved as they were announced whilst the Battalion was on board the ship returning to Australia. He said he and his colleagues had no idea what happened to the Jensen nomination.

29. Colonel Bindley said that having gathered what he considered to be sufficient information to proceed with a recommendation, he had sought the help of the Adjutant to compose the required document and nomination and it was then forwarded to the Battalion Headquarters. Colonel Bindley said that he and the Adjutant had agreed that:

¹³ Ibid.

¹⁴ Colonel M. Bindley, Oral Evidence, Public Hearing, Canberra, See Hulse and the Department of Defence re: Jensen [2020] DHAAT 15.

the appropriate award for Lieutenant Jensen should be, at the very least a Military Cross and could be considered for the award of a Victoria Cross

The 2020 Tribunal's findings

30. Having reviewed the evidence, the 2020 Tribunal was reasonably satisfied that the following facts were established relating to Lieutenant Colonel Jensen's actions on 13 May 1968:

- a. Lieutenant Colonel Jensen was the second-in-command of the 1st Battalion's mortar platoon and in that role, commanded the mortar line. He was trained to perform that role.
- b. The mortar line was attacked by a numerically vastly superior force and was totally overrun. The soldiers were in close combat with the enemy for at least one hour and suffered serious casualties and a number killed in action.
- c. Lieutenant Colonel Jensen was personally involved in close combat and was in the middle of the attack performing not only as the commander on the ground but also as a rifleman. He personally saved one of his wounded men during this close combat.
- d. The mortar line was faced with annihilation and, with enemy in his pits, Lieutenant Colonel Jensen took the decision and accepted the risk to call direct and indirect fire onto his own position.
- e. Lieutenant Colonel Jensen made a deliberate decision to stay and fight under extreme threat rather than withdraw and give up his weapons and equipment and leave his wounded behind.
- f. Lieutenant Colonel Jensen disregarded his personal safety and calmly relayed progress to his superiors and directed the fire of his soldiers, while adjusting indirect and direct fire onto his own position.
- g. The enemy were eventually repelled and withdrew having suffered significant casualties.¹⁵

¹⁵ Ibid.

Lieutenant Colonel Jensen's 2024 application to the Chief of Army

31. As noted above, on 27 June 2024 Lieutenant Colonel Jensen wrote to the Chief of Army seeking what he described as a review of the 2020 Tribunal's decision, and seeking both the upgrade of the Medal for Gallantry to the Victoria Cross for Australia, and the award of the Distinguished Service Cross *as positively assessed in the* (Tribunal's earlier report). Lieutenant Colonel Jensen presented this argument on four bases, namely:

- a) some legal and procedural precedents were not considered;
- b) new contemporaneous witness statements that present additional evidence relevant to determining the level of the award;
- c) substantive evidence that he was not trained to command a mortar platoon; and
- d) the Tribunal's recommendation was not commensurate with the applicant's intent that Lieutenant Colonel Jensen should receive a decoration befitting his contribution to the operational outcome.¹⁶

32. In introducing his application to the Chief of Army, Lieutenant Colonel Jensen referred to the 2020 Tribunal's findings concerning his actions and its subsequent assessment of the circumstances of his service as being 'hazardous'. Lieutenant Colonel Jensen contended that instead, his service should be described as 'extremely perilous' and, in his view, *most likely was the most perilous faced by Australian troops during the entire Vietnam War*.

33. Lieutenant Colonel Jensen further contended that new, contemporaneous evidence set out in his 2024 application *indicate conspicuous gallantry in extremely perilous circumstances* and extreme devotion to duty.

34. Lieutenant Colonel Jensen also contended that the 2020 Tribunal found that his service was distinguished on several counts, over two distinct time frames, and yet only one award was made. He stated that his command and leadership had been *mingled in* with gallantry and that only one gallantry award was made to cover two separate and distinct circumstances.

35. Lieutenant Colonel Jensen presented the following new evidentiary material that he stated was not available to the 2020 Tribunal:

- a) a paper on the battles at Fire Support Bases Coral and Balmoral, written by his signaller, then Private Parr;

¹⁶ Application to the Chief of Army, June 2024.

- b) evidence from then Corporal Gary Davis, the Mortar Platoon Signaller on duty in the Fire Support Coordination Centre with Captain McInally;
- c) evidence from then Second Lieutenant Ahearn, the Gun Positioning Officer of 102nd Field Battery;
- d) evidence from then Captain Bindley;
- e) evidence from Lieutenant Colonel Jensen's service record, which he submitted demonstrated that he was not trained for his appointment; and
- f) precedents that Lieutenant Colonel Jensen contended were not applied to his review.

36. **Training.** Lieutenant Colonel Jensen submitted that his service record did not show that he attended a mortar course, that he was not trained for his appointment, and that the notion that he was doing what he was trained to do was inconsistent with his service record. He stated that, like Ordinary Seaman Edward Sheean VC, there was no evidence that he was trained for his service, and that he was *learning on the job*.

37. **Degree of gallantry/new evidence.** Lieutenant Colonel Jensen pointed to a range of statements in the 2020 Tribunal's decision about his service and its assessment of that service against the eligibility criteria for the Australian Gallantry Decorations. He asserted that witness statements demonstrated that his service amounted to the most conspicuous gallantry in circumstances of great peril.

38. Lieutenant Colonel Jensen referred to the paper from Mr Parr which stated (emphasis added by Lieutenant Colonel Jensen/Mr Parr):

*At the onset of the battle LT Tony Jensen quickly assessed that the mortar platoon was in **very deep** trouble. He decided that their best but slim chance of survival was to stay and fight off the attacking forces. He made the conscious decision for himself **and** his platoon to **fight and live or to fight and die**. At no time did he consider retreating, withdrawal or **'making a run for it**. There were three likely outcomes, **death**, becoming a **prisoner** of the NVA or overcoming the enemy and **surviving**. He chose the latter. This resulted in a **'miracle of survival'** based on exceptional courage and a resolute belief in **'Duty First'** and the unbreakable brotherhood of the Australian soldier. By doing so and with the enemy all around him he displayed outstanding gallantry and utmost devotion to duty.*

LT Tony Jensen was unaware of the full extent of own platoon casualties and the fighting capabilities of those still alive in the mortar platoon. During the course of the battle he was aware Cpl Hickey, Cpl Whitton and Pte O'Brien had been killed and had reported these casualties to Battalion Headquarters. I had seen Corporal Whitton killed by an RPG and Private O'Brien was dead next to myself and Tony in the CP. There were 3 other mortar-men wounded nearby but the status of the others was unknown until after the battle had

*concluded. As the situation was so dire and death was imminent Tony Jensen requested ALL the 'Fire Support' that could be made available at the time. This was not just 'necessary' but **absolutely essential** if any of the troops in the mortar platoon position were to survive. The direct fire of Splintex had the high probability of causing friendly fire casualties on the men of the mortar platoon. Regardless of that possibility Jensen called to his men to 'Get Down!' as Splintex was coming in. It caused no casualties to the men but impacted heavily on the equipment, mortars and mortar ammunition.*

***All of the mortar-men should have been killed or captured on that morning** It is my contention that in this circumstance the decision to stay and fight **AND TO SUSTAIN** this for three hours with his position completely overrun and occupied by enemy is nothing short of **great heroism**. It could also be called '**Conspicuous Gallantry**' by those of us who were there and involved in the battle. The word conspicuous here does not mean visible or eye-catching due to the time and place of the battle. It does however in this context mean **outstanding, remarkable, notable and prominent.**' 'Throughout these three hours LT Tony Jensen and his depleted mortar platoon fought off several ground assaults by the NVA. That they survived was an extraordinary accomplishment and is a demonstration of the resilience and devotion to duty of Jensen and his men. By staying in his position when he was overrun by the enemy which outnumbered the mortar platoon by about 20 to 1, LT Tony Jensen realized that his chance of being killed was extremely high. He was prepared to 'sacrifice his life' before yielding or becoming a POW. This I assert is a clear expression of **an act of self-sacrifice in the presence of the enemy**. By remaining in his position and surrounded by the enemy LT Jensen displayed a complete **disregard for his own safety** and thus was able to fight off the enemy attack with the assistance of fire support.'*

In this dissertation I have described in great detail the situation on the ground in the IRAR mortar platoon position on the morning of 13 May 1968. Being there, right next to Tony Jensen, I observed everything that happened and to the best of my ability and memory I have described the situation on the ground in that action. In this process I have highlighted the action of LT. Tony Jensen as commander of the Mortar Platoon Base Plate. I have analysed and judged this action in terms relating to the criteria written in the 'Letters Patent' for Australian Military Gallantry awards including the Victoria Cross for Australia. Consequently on the basis of the above analysis I am of the view that this action by LT Tony Jensen ranks alongside the likes of French VC and Kingsbury VC, because he lived and led from the front, and at the same time his courage and bravery under immense fire inspired his men to hold their ground and fight on. 'Lieutenant Jensen's outstanding display of gallantry is of the highest order and is in keeping with the finest traditions of the Australian Army.'¹⁷

¹⁷ Ibid.

39. Lieutenant Colonel Jensen also provided the following statement from Mr Buzzard, a 1 RAR Mortarman at FSPB Coral on 12 May 1968, which stated (emphasis added by Mr Buzzard/Lieutenant Colonel Jensen):

*Tony Jensen showed **Outstanding Leadership** in the most Perilous Combat Situation. We had NVA all over us. None of us 18, believed we would live till morning. Tony decided it was better to stay put and fight the NVA on TWO fronts. The other being around the Battery Position.*

*Tony Jensen exhibited **Outstanding Bravery** in exposing himself by sight and sound every time the Command Post came under fire as he issued instructions to his Platoon and other lethal elements by loud voice control. (Radio Damaged) **Tony Jensen performed Outstanding Command and Control** of all elements at his disposal. To call "**DANGER CLOSE**" on your own men takes guts. **Tony knew that was the only recourse he had or lose the lot: Men and equipment.**¹⁸*

40. Lieutenant Colonel Jensen also relied on the following statement from Mr (formerly Private) Harry Northwood:

I firmly believe that Tony Jensen's courage and insistence to have Splintex fired through the mortar platoon's position went a long way toward stopping a total overrun by the N. V.A. The call for Splintex, in sheer desperation, highlighted the overwhelming odds against a poorly prepared, ill equipped and totally outnumbered Task Force.¹⁹

and the following statement from Mr McInnery:

Tony Jensen ordered the soldiers within the mortar position to remain in their weapon pits and to stay below ground level as the friendly artillery fire from 161 battery and 3RAR mortars was being called in on the position. In the best way he could under the circumstances, he ordered the men of his platoon to engage the enemy with their personal weapons and to remain in their pits. That was akin to saying that your best chances of survival was to stay and fight off the attacking enemy. There is no doubt in my mind that had it not been for Tony's coolness and level-headed judgement on 13 May the whole platoon would have perished. The NVA would have dealt with us on their way out of the battle for sure. His call for fire on top of the platoon position was the key to our survival. In addition, had he not seen and shot that NVA soldier who was lining me up for second burst of fire, I would have been killed. I have no doubt about that whatsoever I also can't believe that Tony was not decorated for his actions that day. It's hard to work out why his actions were ignored.²⁰

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

and the following statement from Mr (previously Corporal) Gary Davis:

During the assault the leadership and expertise of Lt Tony Jensen enabled him to organise and continue to control the defence of the platoon.²¹

41. Lieutenant Colonel Jensen also provided a submission from Colonel Ian Ahearn DSM OAM (Retd), which Lieutenant Colonel Jensen asserted highlighted shortcomings in command flexibility essential to the successful execution of their plan as well as the 'off-hand' and 'casual' approach to the defence of Fire Support Base Coral:

The Mortar Line was bedlam with flashes of gunfire and grenade explosions as what I realised was the left-hand edge of the NVA assault was caught up in that position. I called out to Tony Jensen, and he shouted back but each time we attempted to communicate we drew the fire of a NVA machine gun The 1 RAR mortar line was in diabolical trouble ... I called out to Tony Jensen in the Mortar Line and strangely, despite all the noise, he heard me. His position was a mass of explosions and bursts of small arms fire. Our conversation was short lived as each time we shouted we attracted a burst of green tracer from an enemy machine gun. Somewhere in front of the mortars there was a NVA machine gunner who had a good ear ... The Mortar Line was also in dire trouble with the NVA systematically firing at each pit, tent or sign of occupation ... The mortar line was still chaos filled with the flash of small arms fire and the crump of grenades. Rounds from 161 Battery and the 3 RAR mortars were still falling to the front, the air was alive with parachute flares dropped by "Spooky" and the Cobra gunships ...

I was called back into the CP to hear a discussion on the battalion net between the Commanding Officer of 1 RAR, Lieutenant Colonel Phil Bennett and Tony Jensen. Tony provided a clear report of his situation and calmly and persistently asked for Splintex to be fired fire across his position, but Bennett was reluctant to approve what appeared to be a drastic solution. I was impressed by Tony's calmness as his location was a mass of grenade explosions and the constant flashes of small arms fire. Jensen finally prevailed and permission was given ...

The efforts of the gunners and mortar men were instrumental in avoiding what Captain John Bullen, a duty officer in the Nui Dat CP, noted in his diary:

13/5/68 was the day that Australia nearly suffered its greatest catastrophe of the whole war. Although realized by very few at the time, the Task Force HQ ... came within an ace of being wiped out by North Vietnamese Army. The political consequences of this would have been disastrous ... "

The area around the guns and mortars was covered in blood trails and it was obvious that the NVA had removed a host of wounded. Only one NVA wounded soldier was left behind and he became a Prisoner-of-War

²¹ Ibid.

It was a near run thing but now we had to pick up the pieces and get on with the war.

Jensen's action in the mortar position had saved the gun position and the guns returned the favour by preserving what remained of his men by responding to his call for Splintex. Had he not called for Splintex I have no doubt that the mortar-men would not have survived. I was in awe of his calmness when trying to convince his Commanding Officer that the only solution to his predicament was to fire Splintex over his position despite no familiarity with the weapon and not knowing what the consequence might be. His actions in the most perilous conditions were exemplary and merited recognition which only came after 50 years and was not, in my opinion, at an appropriate level.²²

42. Lieutenant Colonel Jensen stated:

*The act of calling artillery and mortar fire onto your own position, whilst subjected to hand to hand fighting **is not** a routine action and **most certainly not** an easy decision to make. I was acting on my own initiative. All I had was my platoon and the 102 Battery nearby. I expected gunships to arrive as well as other artillery and I had a growing number of casualties. History does not record many examples. Indeed, all of our training, regulations and Standing Operating Procedures were designed to ensure that we did not fire onto our own positions accidentally because of the risk of casualties.*

I was constantly attracting enemy fire by yelling to my platoon, talking on the radio, calling artillery and mortar fire adjustments to my signaller, Private Jack Parr, to bring their fire onto my position. I knew the ultimate risk to life and limb for my platoon that this fire could cause.

I called for Splintex to be fired at my position knowing that there was a perilous risk to all of my platoon. I also knew that Splintex would absolutely neutralise the enemy and blunt their attack. It was a huge decision and one which is now embedded in Army folklore. Prior to the firing the Splintex, my Commanding Officer Lieutenant Colonel P.H. Bennett, after lengthy discussion witnessed by Lieutenant Ahearn, asked if I was prepared to take casualties: I said 'yes'. I told my platoon three times that Splintex was about to be fired and then called to Lieutenant Ahearn to fire the Splintex...²³

43. Lieutenant Colonel Jensen referred to Colonel Bindley's contemporary statement that he should be considered for either the Victoria Cross or the Military Cross for those actions. He then turned to a number of historical precedents which he believed supported his view that he displayed the most conspicuous gallantry, and said that his actions were very closely comparable to:

- The Victoria Cross for Captain EK Bradbury VC, of the Royal Horse Artillery at Nery, France on 1 September 1914;

²² Ibid.

²³ Ibid.

- The Victoria Cross for Captain STD Wallace VC, Royal Artillery on 20 November 1917;
- The Victoria Cross for Australia to Trooper Mark Donaldson VC in Afghanistan on 2 September 2008;
- The Victoria Cross for Australia to Corporal Daniel Keighran VC in Afghanistan on 24 August 2010; and
- The posthumous Victoria Cross for Australia to Corporal Cameron Baird VC MG in Afghanistan on 22 June 2013.²⁴

44. Lieutenant Colonel Jensen also drew attention to two American officers awarded the United States Medal of Honor in the Second World War for calling artillery fire on their own positions.

45. Lieutenant Colonel Jensen provided a lengthy self-assessment against other criteria for the Victoria Cross for Australia, which in his view supported the argument that he:

- was in the presence of the enemy;
- performed acts of most conspicuous gallantry;
- displayed extreme daring and courage;
- performed acts of daring or pre-eminent valour or self-sacrifice; and
- displayed extreme devotion to duty.²⁵

46. **Distinguished service.** Turning to the matter of distinguished service for the entirety of his tour of Vietnam in 1968-69, Lieutenant Colonel Jensen referred to paragraph 112 of the 2020 Tribunal's decision, which stated:

For the purposes of the Distinguished Service Decorations, the Tribunal was of the view that it could be seen that Lieutenant Jensen's distinguished service encompassed the entirety of his deployment as a junior commander in 1968 and was not just confined to his actions on 13 May 1968.

47. Lieutenant Colonel Jensen also pointed to other statements from the 2020 report which he submitted demonstrated that his service and leadership was distinguished. He then questioned why the 2020 Tribunal did not provide a further recommendation for the Distinguished Service Cross for his service across his entire tour, as well as for his actions on 13 May 1968 which resulted in a gallantry award. He pointed out several examples of individuals being awarded two or more decorations over one tour of duty, including for service in Vietnam. He concluded by providing the following proposed citations for both the Victoria Cross for Australia and the Distinguished Service Cross:

²⁴ Ibid.

²⁵ Ibid.

Citation 1. Victoria Cross for Australia

Lieutenant Jensen be awarded the Victoria Cross for Australia for the most conspicuous acts of gallantry and extreme devotion to duty when overrun by enemy action and in circumstances of great peril at Fire Support Patrol Base Coral in South Vietnam on 13 May 1968. Lieutenant Jensen's deliberate acts of exceptional courage in circumstances of great peril were instrumental in saving the lives of his remaining men as well as inflicting many casualties on the enemy causing them to withdraw.

These actions held the 1 RAR Mortar Platoon position and secured the flank of 102 Battery Royal Australian Artillery. His actions are of the highest order and in keeping with the finest traditions of the Australian Army and Defence Force.

Citation 2. Distinguished Service Cross

Lieutenant Jensen be awarded the Distinguished Service Cross for successfully discharging his duties as the officer commanding the 1 RAR Mortar line at Fire Support Patrol Base Coral in unprecedented circumstances on 13 May 1968 where he performed those duties in a superior manner in comparison to those normally pertaining to a junior officer in combat. In perilous circumstances, he was able to effectively deal with complexity, coordination of multiple direct and indirect fire assets and report calmly and efficiently to his superiors. His command of his soldiers was swift and precise. He is known to have performed to a superior level in re-constituting his mortar line on 13 May 1968 and commanding it on 16 May 1968 when 141 NVA Regiment mounted a three battalion assault on FSPB Coral. Lieutenant Jensen's distinguished service was not just confined to the one action. Lieutenant Jensen's distinguished service encompassed the entirety of his deployment as a junior commander in 1968 and was not just confined to his actions on 13 May 1968.

Lieutenant Jensen's leadership was demonstrably superior to others with similar employment, responsibility and rank such as a standard rifle platoon commander. In the most perilous of circumstances he demonstrated sound judgement, courage and determination and provided an inspirational example for his subordinates and other officers of similar rank and responsibility.²⁶

The Defence refusal

48. In its written response to Lieutenant Colonel Jensen's 2024 application, Defence relied largely on the 2020 Tribunal's assessment of his service. Defence noted that in the 2020 Tribunal's report, it had considered his actions against both the Gallantry and Distinguished Service Decorations, and that it had determined that the Medal for Gallantry was the most appropriate honour to recognise those actions.

49. Defence further stated that, having comprehensively reviewed the application, including Lieutenant Colonel Jensen's assertion that he was not trained for his appointment, Defence did not consider that there was compelling new evidence to

²⁶ Ibid.

support a request for a review of Lieutenant Colonel Jensen's eligibility for the Distinguished Service Cross.²⁷

Lieutenant Colonel Jensen's application to the Tribunal

50. In his application to the Tribunal, Lieutenant Colonel Jensen stated that Defence's decision did not address, consider or recognise any of the new evidence and argument set out in his application to the Chief of Army, and emphasised that this new evidence was not available to the 2020 Tribunal. He also emphasised that he was not trained for his appointment, and reiterated that he sought the Distinguished Service Cross for his entire tour, as well as a gallantry award for his service on 13 May 1968.²⁸

The current Defence position

51. In its report to the Tribunal of 31 March 2025, Defence submitted that it had comprehensively reviewed Lieutenant Colonel Jensen's application and did not consider that there was compelling new evidence to support the request for the Victoria Cross for Australia or for the Distinguished Service Cross for his entire deployment. It submitted that it considered that his actions of 13 May 1968 were adequately assessed by the Tribunal and that he has been appropriately recognised with the Medal for Gallantry.

52. Defence's report to the Tribunal relied on the 2020 Tribunal's assessment of Lieutenant Colonel Jensen's service against the eligibility criteria for the Gallantry Decorations Regulations. Defence stated that it agreed with the 2020 Tribunal recommendation and that it did not find any new evidence in the 2024 application *that warranted a reassessment of the level of award within the Gallantry Decorations*.²⁹

53. As to Distinguished Service, Defence referred to an observation from the 2020 Tribunal's report where the Tribunal said that Lieutenant Colonel Jensen was said to have performed to a superior level in re-constituting his mortar line and commanding it on 16 May 1968. It referred to the following evidence from Mr Parr that was provided to the 2020 Tribunal:

Following the attack on 13 May the 1RAR Mortar platoon (The two Sections at FSPB Coral) was rendered non-operational. Tony Jensen and myself as his radio operator remained at Coral and the reserve Section at Nui Dat brought forward. A completely new section was formed from reinforcements and from anyone in the task force who had ever done a Mortar Course. It was a very ad-hoc section, inexperienced and mostly untrained. On the morning of the 16th May 1968 Lieutenant Tony Jensen was in command of the two sections of Mortar Platoon at Fire support Base Coral when the base again came under

²⁷ Letter, Mr Tyson Pan to Lieutenant Colonel Jensen, 18 November 2024.

²⁸ Application for Review, Lieutenant Colonel Jensen, 18 December 2024.

²⁹ Defence Report to the Tribunal.

heavy enemy attack by mortars, rockets and heavy machine gun and recoilless weapons. Whilst receiving incoming rockets and mortars, Lieutenant Jensen led his platoon from an exposed position to provide very close mortar fire support for the perimeter of Fire Support Base Coral. During this encounter his platoon fired over 2000 rounds of mortar fire in about 4 hours largely contributing to repelling the enemy assault on FSPB Coral. Lieutenant Tony Jensen demonstrated his ability to bring together an ad-hoc and inexperienced group of men and mold them into an effective and capable fighting force in a very short period of time without the help of capable NCO's. During the attack he displayed a high standard of leadership, professionalism, personal bravery, courage under fire and disregard for his own personal safety thus providing inspiration to his men to continue to do their job which ensured success on the battlefield in the face of overwhelming odds.

54. Defence stated that this passage was the only information that it could identify that supported the Tribunal's finding in the 2020 report that:

For the purposes of the Distinguished Service Decorations, the Tribunal was of the view that it could be seen that Lieutenant Jensen's distinguished service encompassed the entirety of his deployment as a junior commander in 1968 and was not just confined to his actions on 13 May 1968.³⁰

55. Defence stated that in Lieutenant Colonel Jensen's 2024 application, he had asserted that he had *compelling new contemporaneous evidence* to support his application for a Distinguished Service Cross for his entire deployment, but Defence could not identify any new evidence regarding his actions on 16 May 1968 or other examples where he displayed distinguished service on his deployment. Defence submitted that it did not consider the statement by Mr Parr regarding the battle on 16 May 1968 sufficient to support the conclusion that Lieutenant Colonel Jensen displayed distinguished service for the entirety of his deployment. Defence further submitted that, given what it described as the lack of detail about Lieutenant Colonel Jensen's service for the entirety of his deployment, *Defence is unable to assess his service against the Distinguished Service Decorations criteria.*³¹

56. In summary, Defence submitted that it relied on the Tribunal's earlier consideration regarding Lieutenant Colonel Jensen's service against the eligibility criteria for the Gallantry Decorations Regulations (and presumably the Victoria Cross for Australia Regulations), and that there was *inadequate information for Defence to conduct a merit assessment of (his) service on his entire deployment against the Distinguished Service Decorations.*³²

³⁰ Defence Report to the Tribunal.

³¹ Ibid.

³² Ibid.

57 Defence recommended that its decisions regarding his eligibility for both the Victoria Cross for Australia and the Distinguished Service Cross be affirmed.³³

Lieutenant Colonel Jensen's comments on the Defence report

58. On 30 May 2025, Lieutenant Colonel Jensen provided his comments on the Defence report. In doing so, he asserted that Defence had ignored much of his submissions and arguments, and had failed to address his application on the merits. Lieutenant Colonel Jensen went on to criticise the 2020 Tribunal's assessment of his service, its reasoning and its assessment of evidence, in comparison to other cases before the Tribunal over time. He asked the Tribunal to undertake a full merit based review of his service against the eligibility criteria for the Victoria Cross and the Distinguished Service Cross.

59. Lieutenant Colonel Jensen then provided further submissions regarding his service at the Battle at FSB Coral:

On the morning of 13 May 1968 my dead and wounded were evacuated and I received reinforcements, initially two sections in Mortar APC's from 3 RAR. This provided me with four Mortar APC's. The two 81mm mortars rendered useless during the battle by splintex were returned and the remaining two serviceable mortars stayed with me for subsequent use.

I then set about siting my platoon adjacent to A Battery 2/35 Artillery Regiment who were equipped with self-propelled 155mm guns. We each adjusted our perimeters and coordinated our defence.

The following day, 14 May, our reserve section arrived from Nui Dat and relieved one section from 3 RAR and took over their two APC's. Later in the day I received a section of recruits/reinforcements from 1 ATF holding unit which then manned our two serviceable mortars on the ground. The 3 RAR mortar men returned to their battalion with two of their Mortar APC's.

I now had two Mortar APCs and two ground mounted Mortars in my new position, a total of four mortars and their crews.

I then set about inducting the reinforcements into our platoon. This meant moulding them into a cohesive operational fighting unit whilst regularly under enemy mortar, rocket and HMG fire. They learnt our Standing Operating Procedures 'on the job' whilst live firing in real time at war. We based our SOP'S on operational requirements to cover emerging threats. In my situation at FSPB Coral, good command and leadership was crucial for our operational effectiveness, unit cohesion, and ultimately this lead to successful fire missions. I considered my training and knew that I had a high level of tactical proficiency, decisiveness, and needed to inspire and maintain discipline among my platoon. We were working in a high pressure situation. My platoon

³³ Ibid.

were aware that we had just lost 5 KIA and 8 WIA. I insisted on personal readiness as we were called on at no notice to provide fire support at all hours of the day and night, often for prolonged periods.

I issued clear orders when required and constantly went around the mortar line talking to all with a view to enforcing standards as well as building trust and understanding at a time when we were under huge stress in a high risk situation. Every soldier knew their job and their equipment.

I considered that strong command and effective leadership would ensure good cohesion, combat readiness, and operational efficiency. Operating in a war setting quickly instilled confidence and mental toughness in most of my men and ensured adaptability under pressure. A few of my men required more understanding and encouragement for whom I provided individual counselling and support.

This procedure worked well for me and my platoon at FSPB Coral and continued to do so during my time with 8 Platoon which is supported by eye witness statements and excellent results.

My 1 RAR mortar platoon had a good reputation throughout the battalion. This was due to our rapid, accurate response to requests for fire regardless of time or weather. Our Mortar Platoon had three sections of two mortars. Each section commanded by a Sergeant with a Corporal as 2IC.

Our platoon provided each company with a Mortar Fire Controller (MFC) and signaller. They were the Mortar Sergeant Section Commanders from my platoon. Each mortar section of two mortars in the mortar line/baseplate position was commanded on the ground by the section 2IC, a Corporal. The MFC's usually came over to the mortar line after a patrol for a brew and would convey 'Thanks' from the company we had been supporting. This quickly developed morale and ultimately bolstered esprit de corps. We also had occasional visits from the Tankies who wanted to say 'thanks' for our help getting them out of contact.

On 16 May an NVA Regiment again attacked FSPB Coral. We fired some 2700 rounds in support of A Company 1 RAR who were attacked and partially overrun. My mortars fired a "danger, danger close" mission for Lieutenant Neil Weekes at the direction of CO 1 RAR as Weekes counter attacked and retook his platoon position in A Company from the NVA. There had been heavy rain a day before and my Command Post was flooded and had to be rebuilt and the two mortars on the ground had to be rebedded. This entailed digging out the mud under the baseplate and replacing it with a number of compacted, filled sand bags. These 2 mortars had to be dug out twice during our Fire Mission in support of A Company. The whole of FSPB Coral was under mortar, rocket, HMG and small arms fire throughout this attack.

We were constantly providing indirect fire support to battalion fighting patrols which were in contact with the NVA. Some of these were very large battles often involving one of our companies supported by APC's and usually tanks

from C Sqn 1 Armd Regt. These battles usually ran over a number of hours during which we provided "danger close" indirect fire support. This required constant oversight as it entailed meticulous care in siting and firing the mortars as our rounds were falling about 25 m from the troops in contact killing the enemy and also "escorting" the companies, who were trying to make a clean break from the enemy, when they were in danger of being surrounded.

Throughout our time at FSPB Coral we were constantly subjected to harassing fire from NVA mortars and rockets usually by night. DHAAT accepted my actions during this time described by contemporaneous witnesses as demonstrating distinguished command and leadership in action. Defence appear to refute this without explanation...³⁴

60. He then went on to provide further information regarding other service in Vietnam:

I marched into 8 Platoon C Company 1 RAR on 26 July 1968. This was my first appointment as a rifle platoon commander. On 1 August 68 during Operation Platypus, we contacted the VC whilst breaking harbour and I had one WIA who needed 'Dustoff'. Three days later on 4 August we had another contact when my platoon sergeant and two soldiers were hit by RPG shrapnel needing 'Dustoff'. We shot 1 VC. Later on Operation Hawkesbury we had another contact on 8 October on the edge of a bunker system where we shot one VC KIA and I had another two soldiers KIA.

Whilst giving evidence from the floor at my DHAAT hearing. Captain Mick Bindley gave sworn evidence to the effect that, as a platoon commander on operations, my performance was better than others and at a distinguished level. This was during the period November/December 1968 when I showed that I had learnt from previous contacts and applied tactical ingenuity to a number of very successful instant ambushes even though I had a reduced platoon strength of approximately 15 to 22. I have a good eye for ground and achieved good surprise as well as speed and initiative, i.e. I made the decision, sited the ambush, killed the enemy, cleaned up, got a clean break using artillery and mortar indirect fire support for suppression of enemy activity or as cut off for escaping enemy. Some of those contact dates were:

- | | | |
|----|-----------|------------------------|
| a. | 14 Dec 68 | 1 VC KIA |
| b. | 15 Dec 68 | 3 VC KIA |
| c. | 19 Dec 68 | 1 VC KIA |
| d. | 20 Dec 68 | 1 VC KIA |
| e. | 20 Dec 68 | 3 VC KIA |
| f. | 20 Dec 68 | 1 VC KIA ³⁵ |

³⁴ Lieutenant Colonel Jensen's comments on the Defence Report, dated 31 May 2025.

³⁵ Ibid.

61. He also provided additional witness statements from Mr Michael Barrett, Mr Rod Eatock and Mr Chris Johnson. Mr Barrett stated:

I served in the Australian Army for 20 years retiring with the rank of Major. During my time in the Army I was deployed to Malaysia, Borneo and Vietnam, was a company commander in New Guinea and a staff officer at Keswick Barracks, South Australia. I left the Army to look after my children.

In Vietnam I was a Platoon Commander when Lieutenant Jensen was the leading Platoon Commander in the Battalion. 1RAR tactics overall were designed to kill VC. We were operating to achieve tactical advantage over the VC by attrition, making it difficult for the enemy to replace or reinforce their units. The VC were local men and women, mingling with locals in villages and farming day to day, but also living in jungle camps using a network of tracks that they knew well. These tracks led to a number of bunker systems of varying sizes and complexity. They were well armed and travelled singly or in groups of various sizes - usually 3 or 5, but occasionally 7 to 8 and rarely up to 10. We never knew what to expect from an ambush or contact. There was always the threat of counter attack or flanking movement.

Their first reaction was always to fire RPGs into our position - planning of ambushes had to anticipate this.

On my return from leave in mid December 1968 a number of my soldiers were able to brief me urgently some very successful ambushes by 8 Platoon under Lieutenant Jensen's command. Lieutenant Jensen's bravery under fire whilst leading these ambushes was exemplary.

Following these actions he led the body count for 1RAR. This was an extremely brave and successful mission and was a credit to Lieutenant Jensen and his platoon.

Lieutenant Jensen was highly thought of by other officers and soldiers, and was due credit for his command in Vietnam. I salute him.³⁶

62. Mr Eatock stated:

I met Lieutenant Tony Jensen during my last three months in Vietnam. He arrived as the Platoon Commander of 8 Platoon Charlie Company 1RAR. During this time, my role alternated between being an Acting Section Commander and actually being a Section Commander. There were sixteen men in the platoon as we had not received reinforcements to bring the platoon up to its usual established strength of 33 diggers. This was probably due to the expectation that after the tour of duty in Vietnam had finished, the battalion would be posted to Singapore or Malaysia.

³⁶ Ibid.

I recall that during the time that Lieutenant Tony Jensen was our platoon commander, we managed to score the highest 'kill count' in the Company. This was not surprising because he organised the understrength platoon into three machine gun assault groups. This arrangement of his firepower was well used in ambushes and during contacts with the Viet Cong. The usual Australian contact drill was dispensed with, and Jensen had us attack any contact with an immediate platoon attack using the three machine gun groups as manoeuvre elements. It worked well and we were able to get on top of the Viet Cong before they bugged out using their 'shoot and scoot' tactics.

I was extremely blessed to have served with the two best officers of my twenty-year career. They were Major 'Digger' Campbell as our Company commander and Lieutenant Tony Jensen as my platoon commander.

In Lieutenant Jensen's case, I knew and saw at first-hand what had happened to the Mortar Platoon on the morning of 13 May 1968 at FSPB Coral and the remarkable leadership and resilience that Jensen displayed at that time. I found that experience as inspirational and my confidence in our officers increased as a result. However, after Lieutenant Jensen had taken over 8 Platoon and I had daily contact with him, I was to experience his command and leadership personally and consider him to be one of the finest officers of my career.

One of my recollections on the morning of 13 May 1968 was when Charlie Company came through the Mortar Platoon and seeing a mortar aiming post totally covered in blood. On the way through the Mortar Platoon area we stepped over one of their shellscrapes and saw the corpse of a mortar platoon digger with his head blown away and his brains spread across the pit. We also saw evidence of more Australian dead and wounded together with a large number of North Vietnamese soldiers killed trying to attack the mortars and the guns. As a young soldier, that was a most challenging sight. A striking feature of that experience is seeing Jensen handle himself so well and how he went on and reformed his platoon to fight another day.³⁷

63. Mr Johnson stated:

I make this submission based on my own experiences and recollections at Fire Support Base Coral from 13th May to 6th June 1968 in particular my experiences with the Mortar Platoon of the 1st Battalion RAR.

In the early hours of the 13th May 1968 at Fire Support Base Coral the Mortar Platoon of the 1st. Battalion was attacked by an overwhelming force of North Vietnamese regular forces. The officer in charge of the Mortar Platoon was LT. Anthony Jensen. The Mortar Platoon was soon over-run.

Normally when a position is over-run the defenders surrender and taken prisoner. However LT. Jensen instructed his men to remain in their pits and defend themselves and their mortars. This decision by him undoubtedly saved

³⁷ Ibid.

the lives of the men who survived the initial onslaught by the North Vietnamese Army. The Mortar Platoon was over-run but Jensen showed enormous courage and leadership whilst under heavy enemy fire. I have no doubt that the decisions and leadership of LT. Jensen saved the lives of the 13 surviving Mortarmen left in his position even though most of them were seriously wounded.

Not only was LT. Jensen commanding his platoon but he was also calling in Artillery and other support on to his own position whilst personally actively fighting the enemy at very close quarters.

A few hours later that morning LT Jensen then went on to reassemble another IRAR Mortar Platoon and commanded this unit through the large-scale enemy human-wave attacks against FSPB Coral on the 16th May 1968, just three days after his original platoon had been over-run and neutralised by the enemy.

I saw him in action on 16th May 1968 when he instructed three of his men (of which I was one) to replenish mortar ammunition from the 1 ATF ammunition dump located inside the perimeter of FSPB Coral.³⁸

His coolness under extreme pressure and his clear orders were an inspiration to his Diggers.

This Officer is held in very high regard by all members of the Mortar Platoon and the broader Army to this day due to his distinguished command and leadership in action and the awarding of the highest levels of courage, command and leadership would be supported by all members of the Mortar Platoon of the 1st Battalion 1968.

64. Lieutenant Colonel Jensen further submitted:

It is very clear from the Letters Patent that specified actions only need to occur at one event for an individual to qualify for either the VC for Australia or the DSC. My actions at FSPB Coral whilst overrun by the NVA have been assessed by my superiors, peers and soldiers who all gave contemporaneous witness evidence which show that I meet each of the criteria for the VC for Australia and similarly my actions for my entire tour of duty in South Vietnam meet the criteria for the DSC.³⁹

Tribunal Consideration

65. In his current application to the Tribunal, Lieutenant Colonel Jensen effectively asks the Tribunal to vary its 2020 decision in two respects - by recommending that he be awarded the Victoria Cross for Australia, rather than the Medal for Gallantry, for his actions on 13 May 1968, and by adding a separate recommendation that he be awarded the Distinguished Service Cross for his service throughout his tour of duty in Vietnam

³⁸ See *Hulse and the Department of Defence re: Hughes, Johnson and Walker [2021] DHAAT 4*

³⁹ *Ibid.*

in 1968 and 1969. In the former case, he says that the 2020 Tribunal ‘got it wrong’ in settling on the Medal for Gallantry rather than the Victoria Cross for Australia. In the latter case, he says the Tribunal failed to reflect in its recommendation the view *that it could be seen that Lieutenant Jensen’s distinguished service encompassed the entirety of his deployment as a junior commander in 1968 and was not just confined to his actions on 13 May 1968.*⁴⁰

66. In these circumstances it is appropriate to make clear the obligation and approach of the Tribunal. There is no doctrine of precedent applicable to proceedings in the Tribunal, such as applies in lower courts where there is already a decision of a higher court on the issue in question. Rather, in every application for review, the Tribunal is required to review the reviewable decision ‘on the merits’. This necessitates consideration by the Members comprising the Tribunal for the purposes of the application in question of all the evidence and arguments put before them. In making its decision, the Tribunal must consider afresh the relevant facts, law and policy. The Tribunal is bound to make what it regards as the ‘correct and preferable’ decision. It is appropriate to have regard to a previous Tribunal decision of relevance, but it cannot regard itself as in any way bound by that earlier decision.

67. Accordingly, the Tribunal as constituted for this review was fully prepared to reach a decision and make recommendations different from those of the 2020 Tribunal if, after consideration of all relevant matters, it concluded on the basis of its own analysis that doing so would arrive at the ‘correct and preferable’ decision. The fact that doing so might be perceived by some as giving rise to a conflict between the 2020 Tribunal and the present Tribunal was regarded as simply irrelevant.

The Victoria Cross for Australia and the events of 13 May 1968

68. The Victoria Cross for Australia may be awarded:

*... for the most conspicuous gallantry, or a daring or pre-eminent act of valour or self-sacrifice or extreme devotion to duty in the presence of the enemy.*⁴¹

69. In *Hulse and the Department of Defence re; Norden DHAAT 11 (20 July 2023)* the Tribunal discussed at some length the meaning of those eligibility criteria and sought to provide guidance on how they should be applied. Neither Lieutenant Colonel Jensen nor Defence raised any objection to the Tribunal drawing upon that guidance in its analysis of the facts of the present case.

⁴⁰ Application for Tribunal Review, 24 December 2024.

⁴¹ Commonwealth of Australia Gazette S25 – 4 February 1991, Letters Patent and Regulations for the Victoria Cross for Australia.

Gallantry Decorations

70. 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.'*⁴²

71. The honours are governed by Regulations which, as amended in 1996, provide that:

Conditions for award of the decorations

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

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

(3) *The Commendation for Gallantry may be awarded for other acts of gallantry in action which are considered worthy of recognition.*⁴³

72. Each of the gallantry decorations accord recognition for individuals 'who perform acts of gallantry in action'. Whilst 'in action' is a relatively straightforward concept, 'gallantry' is an abstract term which is not defined in the Regulations. Various dictionary definitions such as 'dashing courage; heroic bravery'⁴⁴ and 'courageous behaviour, especially in battle'⁴⁵ 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.⁴⁶ Again, this is largely unhelpful in defining gallantry in the context of the Australian Honours and Awards system.

73. In previous cases the Tribunal has consistently stated that it considered that there is an expectation that all soldiers in battle conducting themselves in accordance with their training, will be acting bravely. The Tribunal considered 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. What amounts to an 'act of gallantry' necessarily varies according to the individual circumstances of

⁴² Commonwealth of Australia Gazette No. 25, 4 February 1991, Letters Patent and Regulations for the Australian Gallantry Decorations.

⁴³ Commonwealth of Australia Gazette No. S420, 6 November 1996 – Amendment of the Gallantry Decorations Regulations.

⁴⁴ The Macquarie Dictionary on-line accessed 17 December 2025.

⁴⁵ The Oxford Dictionary on-line accessed 17 December 2025.

⁴⁶ <http://medals.nzdf.mil.nz/category/d/index.html>.

each action, and depends 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.

74. The Tribunal has considered 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.

75. The Tribunal again adopted this approach in the case of this application for review.

The 2020 Tribunal decision

76. The 2020 Tribunal reached a clear view that Lieutenant Colonel Jensen's actions on 13 May 1968 were gallant and that was accepted by the Minister and the Governor-General in awarding him the Medal for Gallantry. Defence raised no contrary view in the context of the present application.

77. While the 2020 Tribunal did not expressly consider whether that gallantry was sufficient to meet the eligibility criteria for the Victoria Cross for Australia, it did consider whether it was sufficient to meet the criteria of *acts of great heroism or conspicuous gallantry in action in circumstances of great peril* which would justify a recommendation for the higher award of the Star of Gallantry.

78. In this regard, the 2020 Tribunal said:

89. In Hanuszewicz and the Department of Defence re Cameron, the Tribunal considered that 'circumstances of great peril' are likely to occur when both the individual and the group are threatened to such an extent that there is a distinct probability that the group would be overwhelmed by the enemy. The Tribunal was satisfied that Lieutenant Jensen and his men had been overrun by a significantly superior force and were involved in desperate hand to hand combat at close quarters.

90. Witnesses described the situation as dire, perilous and there was the real potential of annihilation. Additionally, there was the prospect that they would be killed or injured by their own fire support. There was little cover and visibility was limited, confusion reigned and there was uncertainty and fear of the unknown. Accordingly, the Tribunal finds that Lieutenant Jensen was in circumstances of great peril.

91. In relation to whether Lieutenant Jensen's actions during the engagement could be considered to be acts of great heroism, the Tribunal noted that none of the evidence suggested such heroism. While Lieutenant Jensen remained calm, was decisive and issued clear orders and instructions; these actions

could not be considered by the Tribunal to be acts of 'great heroism'. He demonstrated outstanding control and excellent skill in adjusting fire. He made a courageous decision to accept direct fire onto his own position. He also displayed well advanced basic infantry skills. His decision to stay and fight despite the perilous circumstances was in the Tribunal's view a decision which highlighted his leadership qualities and, whilst it may be seen to be an heroic action or decision, the Tribunal could not be reasonably satisfied that it amounted to 'great' heroism.

92. The Tribunal was of the view that the most significant act of gallantry was the calling of fire by Lieutenant Jensen onto his own position. It is more likely than not that the direct and indirect fire onto the enemy ultimately caused their assault to falter leading to their withdrawal. As previously described, the act of calling fire unto his own position was undeniably gallant. The question for the Tribunal is whether the Tribunal could be reasonably satisfied that the act was one of 'conspicuous gallantry'.

93. The Tribunal noted that all infantry officers are trained in all-arms call for fire and are expected as part of their training to be able to adjust such fire and, in the most dire of circumstances, to be able to call it onto their own position. Indeed, for a mortar qualified officer such as Lieutenant Jensen, it is expected that he would be able to do so with relative accuracy. This was an occasion where the Tribunal considered that Lieutenant Jensen was gallantly doing what he was trained to do. Even though he was doing what was expected of him, in the dire circumstances which he faced, could it be considered to be 'conspicuous' gallantry?

94. Dictionaries define the word 'conspicuous' as 'visible' or 'readily attracting attention' or 'notice'. In the Tribunal's view this understates the level of gallantry required for a Star of Gallantry. 'Conspicuous gallantry' is an alternative to 'great heroism' in the Regulations for the award and thus must be something of greater weight, consequence or significance. 'Conspicuous' in this context must be seen as outstanding, prominent, noteworthy, eminent or distinguished. On the other hand it must be less than 'most conspicuous gallantry', one of the tests for the Victoria Cross for Australia.

94. As set out above the most significant act of gallantry by Lieutenant Jensen was the calling of fire onto his own position. It is likely that the direct and indirect fire onto the enemy ultimately caused their assault to falter leading to their withdrawal. Having regard to the perilous circumstances facing the mortar platoon, Lieutenant Jensen's decision to call fire unto his own position was a necessary action, brought about by the mortar line being over-run and the platoon on the cusp of annihilation. The Tribunal considered that in order for an act of gallantry to meet the test of being 'outstanding, prominent, noteworthy, eminent or distinguished', the act would be one beyond what is necessary in the circumstances, even where those circumstances are perilous. The Tribunal was therefore not

persuaded that this act, while undeniably gallant, was ‘conspicuous’ in terms of the Star of Gallantry Regulations.

95. *Finding in Relation to the Star of Gallantry.* *The Tribunal is reasonably satisfied that for the purposes of the Gallantry Decorations Regulations, Lieutenant Jensen was in circumstances of great peril but did not perform acts of great heroism or conspicuous gallantry. He therefore does not satisfy the eligibility criteria for the award of the Star of Gallantry.*⁴⁷

79. It is clear from the above that the 2020 Tribunal found that, while Lieutenant Colonel Jensen was *in action in circumstances of great peril* on 13 May 1968, his actions on that occasion did not in its view constitute *acts of great heroism or conspicuous gallantry*. It is also clear that the 2020 Tribunal was prepared to countenance an award of a defence honour other than that sought in the application to Defence and refused in the Defence decision. Lieutenant Colonel Hulse had sought, and Defence had refused to recommend, the Distinguished Service Cross. Despite this, the Tribunal considered the alternative of a Gallantry decoration. While not expressly stated, it is implicit in its decision that, having concluded that Lieutenant Colonel Jensen’s gallantry was not ‘conspicuous’, it would have found that it was not ‘the most conspicuous gallantry’ had it expressly considered the alternative of a Victoria Cross for Australia.

80. One question for the present Tribunal, while it is bound to come to a view by its analysis alone and while it is not the role of the present Tribunal to conduct a formal review of the decision reached by the 2020 Tribunal, is whether it should come to a contrary view on the question of gallantry, or conclude that Lieutenant Colonel Jensen’s actions on 13 May 1968 otherwise met the eligibility criteria for the Victoria Cross for Australia.

The evidence before the present Tribunal

81. In his application to Defence, his application to the Tribunal, and in materials tendered at the hearing, Lieutenant Colonel Jensen provided many documents of relevance that were not available at the time of the 2020 Tribunal’s consideration. Of particular relevance were very substantial and detailed accounts of the events of 13 May 1968 written by Mr Parr since the time of the 2020 Tribunal hearing. Mr Parr had been located very close to Lieutenant Colonel Jensen on that day and was in an unsurpassed position to observe the events in question. And, at the hearing of 17 October 2025, Lieutenant Colonel Jensen provided his own detailed oral evidence and additionally called oral evidence from witnesses to the events in question - Mr Parr, Mr Buzzard, and Colonel Bindley (who, for health reasons, predominantly spoke with the assistance of Lieutenant Colonel Hulse). Additionally, while not a witness to the

⁴⁷ See Hulse and the Department of Defence re: Jensen [2020] DHAAT 15.

events of 13 May 1968, Lieutenant Colonel Hulse supported the testimony of those witnesses from an advocacy position.

82. The Tribunal was indebted to, and greatly appreciated, the attendance and testimony of, each of these persons and wished to acknowledge that providing that first-person evidence would have been highly confronting for those forced to re-live the truly awful events of 13 May 1968 and, indeed, other service.

83. While this additional documentary and oral evidence may not have added any, or any significant, new 'hard' facts about those events, it did provide the Tribunal with the considerable assistance of making clear the intensity and 'colour' of the circumstances prevailing on that day.

84. The Tribunal noted that there are numerous accounts of the action on 13 May 1968 in various publications and from witnesses as described in the application and summarised earlier in this report. The core actions of Lieutenant Colonel Jensen are not in dispute and were not materially questioned by Defence. However, where there may be some inconsistencies, the Tribunal preferred Lieutenant Colonel Jensen's personal oral evidence, supported by the written and oral evidence of his eye witnesses.

85. It was clear from the oral and written testimonies of all of those supporting Lieutenant Colonel Jensen that they each greatly admire him, and support his claim for recognition by the Victoria Cross for Australia (and the Distinguished Service Cross, discussed separately below). Undoubtedly, they each believed and they strongly claimed that Lieutenant Colonel Jensen met the applicable eligibility criteria.

86. However, while the Tribunal readily accepted the accuracy of their evidence as to matters of facts, it was not prepared to immediately accept their assertions as to the eligibility criteria given that these were not supported by any substantive legal analysis of those criteria as opposed to assertions of their applicability. Instead, the Tribunal was of the view that it was incumbent on it to reach its own conclusion on eligibility by application of its own understanding of the criteria to the facts, notwithstanding that it accepted the factual evidence provided on behalf of Lieutenant Colonel Jensen and notwithstanding that Defence challenged none of that evidence.

The options available to Lieutenant Colonel Jensen on 13 May 1968

87. At the hearing, in order to enable it to better assess the significance of his actions on 13 May 1968, the Tribunal canvassed with Lieutenant Colonel Jensen the question of what options were realistically available to him on that day.

88. It is clear that the option of withdrawing from the mortar section placement, if it ever realistically existed, evaporated as a viable option very quickly after the enemy presence was detected at around 2.30 a.m. Very soon after that detection, the enemy

assault was so intense and the mortar section's placement so quickly overrun that any attempt at withdrawal would have almost certainly met with instant death. Moreover, given the speed with which so many section members were either killed or wounded, it would have been obvious that, if withdrawal was attempted, those few still uninjured could not have taken their wounded or deceased comrades with them, and would also have been forced to leave the mortars and ammunition behind, which the enemy could have then used to attack other elements of the Australian forces.

89. Staying in their most precarious location was thus effectively mandated. But seeking to repel the enemy advance solely with their available weapons would not, by itself, have been a viable option. The enemy was very quickly too close to the section's positions to allow effective and safe use of the mortars, and use of personal weapons alone gave only limited capacity to repel the number of enemy who were literally amongst the section.

90. In those circumstances, surrender was perhaps a theoretical option. But, given the intensity of the battle, the number of enemy combatants and their proximity, standing to surrender without being killed in the act of standing would have been highly unlikely if not impossible.

91. In these circumstances, the only real option available to Lieutenant Colonel Jensen was to call artillery fire onto his position and, when it was offered, to accept the use of splintex notwithstanding the high risk to which it exposed his men if they were not as close to the ground as possible within their ill-prepared positions.

92. This assessment of the options available to him was the subject of discussion at the hearing and not disputed by Lieutenant Colonel Jensen or any of his witnesses.

Assessment of the gallantry of Lieutenant Colonel Jensen

93. In relation to the criterion of gallantry viewed in isolation, it is apparent from the text quoted above that the Regulations for the Gallantry Decorations and for the Victoria Cross for Australia establish a scale of gallantry.

At the base level, other acts of gallantry in action which are considered worthy of recognition may be recognised by the Commendation for Gallantry.

More significant acts that amount to gallantry in action in hazardous circumstances may be recognised by the Medal for Gallantry.

Even more significant acts that amount to conspicuous gallantry in action in circumstances of great peril may be recognised by the Star of Gallantry.

And, at the top of the scale, the most conspicuous gallantry may be recognised by the Victoria Cross for Australia.

94. At the hearing, the Tribunal invited Lieutenant Colonel Jensen to expand upon his claim that the 2020 Tribunal had undervalued his gallantry by finding that it was at the level of the Medal of Gallantry rather than that of the Star of Gallantry. It also invited him to expand upon his further claim that it should be found to be ‘most conspicuous’ as required for the award of the Victoria Cross for Australia.

95. In response, Lieutenant Colonel Jensen asserted that he was in circumstances of great peril on 13 May 1968, rather than just in hazardous circumstances. However, the Tribunal pointed out that the 2020 Tribunal had agreed with that, but had been of the opinion that the gallantry it accepted he had displayed was not *conspicuous*. Accordingly, the Tribunal sought reasons from Lieutenant Colonel Jensen as to why he thought the level of gallantry he had displayed was conspicuous or most conspicuous.

96. The Tribunal considered, however, that Lieutenant Colonel Jensen did not provide any convincing argument in this respect, other than pointing to the perilous nature of the prevailing circumstances.

97. Notwithstanding that Lieutenant Colonel Jensen did not set out any convincing argument as to why his gallantry on 13 May 1968 was conspicuous or most conspicuous, the Tribunal considered whether or not it could itself discern any basis on which to rate it at those higher levels.

98. However, having regard to the above assessment of the options available to Lieutenant Colonel Jensen in the circumstances then prevailing, the Tribunal considered that the fact that he had effectively no available option but to call in indirect fire over his section meant that his gallantry could not properly be rated more highly. In this regard, his circumstances were readily distinguishable from those prevailing in a number of other cases in which the Victoria Cross for Australia had been awarded. For example, Ordinary Seaman Sheean VC, Private Richard Norden VC and Warrant Officer Kevin Wheatley VC MG each had the clear option of alternative and far less dangerous action for which they could not have been criticised if they exercised that option. In contrast, while his action was gallant, Lieutenant Colonel Jensen essentially did what he had to do.

99. The 2020 Tribunal report stated:

The Tribunal noted that all infantry officers are trained in all-arms call for fire and are expected as part of their training to be able to adjust such fire and, in the most dire of circumstances, to be able to call it onto their own position. Indeed, for a mortar qualified officer such as Lieutenant Jensen, it is expected that he would be able to do so with relative accuracy. This was an occasion where the Tribunal considered that Lieutenant Jensen was gallantly doing what he was trained to do.

100. This present Tribunal noted that training for calling in fire was not related to Lieutenant Colonel Jensen's qualification as a mortar platoon commander but rather his training as an officer. This present Tribunal considered that the capabilities and actions exhibited by him on 13 May 1968 should be assessed primarily by reference to those of an Infantry Rifle Platoon Commander - not a Mortar Line Officer, Mortar Platoon 2IC. That is, the mortar platoon was only able to fire very few many mortar rounds on 13 May 1968, but fired predominantly machine gun and rifle rounds in defence of their position. These actions are infantry skills and effectively had nothing to do with firing mortars from their location. Furthermore, during an interview on 17 December 1980, when asked: *How much training had the mortar platoon carried out prior to going to Vietnam?*, Lieutenant Colonel Jensen replied *quite extensive training. Normal training on the Holsworthy range, live firing and deployment plus participation in all battalion exercises which involved redeployments and so on.*⁴⁸

101. Accordingly, the Tribunal further considered that the fact that Lieutenant Colonel Jensen was not trained as a mortarman did not change the assessment of his actions on 13 May 1968 during which he exercised leadership, command and judgment reflective of his training as an officer.

Assessment against other criteria

102. 'Most conspicuous gallantry' is not the only criterion on which the Victoria Cross for Australia may be awarded. Other criteria require that consideration be given to whether Lieutenant Colonel Jensen performed *a daring or pre-eminent act of valour or self-sacrifice or extreme devotion to duty in the presence of the enemy.*

103. However, the Tribunal concluded that these criteria were not met in this case. Clearly Lieutenant Colonel Jensen acted in the presence of the enemy. But, while it accepted that Lieutenant Colonel Jensen performed acts of gallantry, it considered that this was not a 'pre-eminent' act of valour given that he had no effective option but to do what he did. And, while his actions ran the risk that he might thereby make the ultimate self-sacrifice if struck by the splintex he had agreed to, that possibility did not eventuate and, again, he had no effective option but to do what he did. Finally, while he no doubt displayed devotion to duty, the Tribunal did not perceive this devotion to duty to have been at the level of 'extreme' in the circumstances he then faced – while his actions were gallant and undoubtedly saved the lives of the remaining members of the mortar platoon and his own life, in the view of the Tribunal what he did was what was effectively required of him because he had no other viable option.

⁴⁸ Record of interview, Major Ian McNeill with Lieutenant Colonel Jensen and Major L.J. Tranter, Interview 57, AWM 107 Folder 12.

104. On all these other criteria, the circumstances in the case of Lieutenant Colonel Jensen were readily distinguishable from those faced by other recipients of the Victoria Cross for Australia such as Ordinary Seaman Sheean, Private Norden and Warrant Officer Wheatley.

Comparison with other awards of the Victoria Cross for Australia

105. As noted above, the Tribunal considered that the circumstances of Lieutenant Colonel Jensen's service on 13 May 1968 were not comparable to those for which Ordinary Seaman Sheean, Private Norden and Warrant Officer Wheatley were each awarded a Victoria Cross.

106. In addition to those cases, the Tribunal also considered whether there were other awards of either the Australian or the Imperial Victoria Cross that, by comparison to Lieutenant Colonel Jensen's service on 13 May 1968, would tend to suggest that he should be similarly recognised for that service. The cases considered by the Tribunal included each of those to which Lieutenant Colonel Jensen or Mr Parr made reference. The Tribunal also looked beyond those. While no case should be regarded as a strict 'precedent' for another, it is vital for the integrity of the defence honours and awards system that comparable performance is comparably recognised.

107. While there are many cases in which a Victoria Cross has been awarded because the recipient saved the lives of their comrades, the Tribunal found none where the circumstances were directly comparable to those of Lieutenant Colonel Jensen's service on 13 May 1968.

108. A clear point of distinction is that Lieutenant Colonel Jensen, while clearly gallant in that occasion, effectively had no option but to do what he did, albeit that he may have made himself a target each time he called out to his section members to warn them to keep down as each round of splintex was about to be fired (as the Tribunal considered would have been reasonably expected of an officer in the same circumstances). While this was gallant and contributed to saving lives, the saving the lives of others, of and by itself, appears never to have been the basis for an award of the Victoria Cross. Rather, the underlying theme appears to have been the adoption of an option of great risk that might otherwise have been rejected without breach of duty or criticism.

Lack of contemporaneous recognition documentation

109. The Tribunal noted the following from an examination of Lieutenant Colonel Jensen's service record:

- a) his Annual Confidential Report for the reporting year ended 31 October 1968 contained performance ratings that were around the middle to middle high mark.

Concerning his management of subordinates, the rating was ‘*Subordinates work quite well for him*’, one point lower than the highest rating of ‘*Gets the best out of subordinates*’. However this rating was annotated with the comment ‘*however needs to display his enthusiasm to his men.*’⁴⁹ Lieutenant Colonel Jensen’s overall ratings and performance was summarised as ‘*a capable young officer who is still getting to know his platoon. He needs to show more confidence and enthusiasm to his soldiers and will surprise himself with the results he will achieve*’,⁵⁰ and

- b) the assessment of his performance appeared to focus primarily on his service in Malaysia with 1 RAR, after his service in Vietnam.⁵¹

110. For the sake of clarity, the Tribunal wished to stress that it placed no weight on the fact that these documents failed to refer to or assess his performance in Vietnam, whether on 13 May 1968 or more generally. There could be many reasons why that was so. While there was some suggestion at the hearing that more senior officers did not want to draw attention to the action on 13 May 1968 because of a concern that their own role in leaving the mortar platoon exposed and inadequately prepared with the resultant disastrous consequences might be highlighted, the Tribunal considered it unnecessary to form any concluded view on such speculation.

111. Instead, the Tribunal accepted the factual evidence put forward by Lieutenant Colonel Jensen and his witnesses and applied its own judgement in assessing those facts by reference to the applicable eligibility criteria.

Conclusion on the Victoria Cross for Australia

112. In light of the above analysis, the Tribunal concluded that it could not recommend that the Victoria Cross for Australia be awarded to Lieutenant Colonel Jensen for his service on 13 May 1968.

The Distinguished Service Cross

113. As noted above, Lieutenant Colonel Jensen sought conferral of the Distinguished Service Cross in reliance on what he said was a finding by the 2020 Tribunal *that it could be seen that Lieutenant Jensen’s distinguished service encompassed the entirety of his deployment as a junior commander in 1968 and was not just confined to his actions on 13 May 1968.*

⁴⁹ Annual Confidential Report, Officers, Year ending 31 October 1968, Lieutenant Colonel Jensen Service Record.

⁵⁰ Ibid.

⁵¹ Annual Confidential Report, Officers, Year ending 31 July 1969, Lieutenant Colonel Jensen Service Record.

114. In order to ascertain what weight should be placed on that statement by the 2020 Tribunal, it is necessary to consider the context in which it was made.

Consideration by the 2020 Tribunal

115. On 30 June 2017 Lieutenant Colonel Hulse had written to the Chief of Army urging that Lieutenant Colonel Jensen *should receive a decoration befitting [his] contribution* during the battle on 13 May 1968. On 3 July 2018 Defence asked Lieutenant Colonel Hulse to clarify the level of award he was seeking. On 12 November 2018 Lieutenant Colonel Hulse applied for the Distinguished Service Cross for Lieutenant Colonel Jensen's actions on 13 May 1968. On 30 October 2019 the Chief of Army decided to refuse to recommend Lieutenant Colonel Jensen for the Distinguished Service Cross for his actions on 13 May 1968. On 6 December 2019 Lieutenant Colonel Hulse sought review by the Tribunal of that decision.

116. Accordingly, at that time there was no Defence decision to refuse to recommend Lieutenant Colonel Jensen for the Distinguished Service Cross for his actions across the whole of his tour in Vietnam in 1968 and 1969. The 2020 Tribunal therefore had no jurisdiction to consider that matter, because there was then no reviewable decision upon which Tribunal jurisdiction must be reliant.

117. In its report, the 2020 Tribunal said:

Noting that the original application sought 'recognition' and having considered all of the evidence and the material placed before it, the Tribunal decided that it would first consider Lieutenant Jensen's actions against the Gallantry Decorations Regulations. In making this decision the Tribunal gave significant weight to the fact that new evidence pointed to Lieutenant Jensen having been previously nominated for his gallantry on 13 May 1968. The Tribunal decided that if it were to find that his actions were not gallant, it would then move to an assessment of whether his service was distinguished.⁵²

118. Having found that Lieutenant Colonel Jensen's actions on 13 May 1968 met the eligibility criteria for the Medal of Gallantry, it was strictly unnecessary for the 2020 Tribunal to consider the eligibility criteria for the Distinguished Service Cross in respect of the same actions. This was because of the long-standing policy in relation to defence honours against 'double-medalling'. Nevertheless, the Tribunal then went on to say:

Having found that Lieutenant Jensen was eligible for the award of the Medal for Gallantry, it was not necessary for the Tribunal to continue to assess his eligibility for the Distinguished Service Cross. However, for completeness, and recognising that the application was in relation to that award, the Tribunal makes the following observations and comments.

⁵² See Hulse and the Department of Defence re: Jensen [2020] DHAAT 15.

*105. **What is Distinguished Service in Warlike Operations?** The Tribunal notes that Defence does not have guidance as to what constitutes distinguished service and at hearing, was unable to assist the Tribunal in establishing how it makes an assessment as to the merits of nominations despite frequently considering and making recommendations for these awards.*

106. The Tribunal noted that distinguished service decorations accord recognition to members of the Defence Force and certain other persons for distinguished command and leadership, distinguished leadership, or distinguished performance of duties, in warlike operations.

107. The Tribunal considers that the first step in determining whether an individual's service is distinguished is to define what that service was. The Tribunal considers that 'service' in warlike operations may relate to the individual's appointment, role or posting, or it may relate to a period of time, such as a particular operation, during which an individual's achievements were worthy of recognition. It is unlikely that such service would be for a single action or act, but rather for a specific duration, although that duration may vary according to the circumstances. Any assessment of performance will relate to the entirety of the period involved.

108. The Tribunal further considered that for service to be 'distinguished', the individual in that role or appointment would have successfully discharged duties which were additional or superior to those normally pertaining to the individual's rank and employment.

109. For distinguished command, the Tribunal considered that the individual must be in a command role, regardless of rank. The individual may not be in a formal command appointment, but may be eligible as the result of having had to exercise de facto command, particularly where that command involves a greater degree of independent decision making than would normally be expected of a member of the rank held. In any case, for command to be distinguished, the individual must have demonstrated the ability to effectively deal with complexity, difficult coordination challenges and multiple superiors, influencers and subordinates.

110. For distinguished leadership, an individual must be in a position where leadership is required and his or her leadership must be demonstrably superior to others with similar employment, responsibility and rank. Such leadership should have been evident for the period under consideration. Whilst definitions of leadership abound, the Tribunal was satisfied that the common qualities found in successful operational leaders included example, judgement, courage and willpower. Successful leadership is not a product of rank or responsibility, the most junior sailor, soldier or airman can display 'distinguished leadership' depending on the circumstances.

*111. **Was Lieutenant Jensen's Service Distinguished?** The Tribunal considered that Lieutenant Jensen's service was distinguished. He successfully discharged his duties as the officer commanding the mortar line in unprecedented circumstances and performed those duties in a superior*

manner in comparison to those normally pertaining to a junior officer in combat. The Tribunal also noted that there was evidence that Lieutenant Jensen's distinguished service was not just confined to the one action. He is said to have performed to a superior level in re-constituting his mortar line and commanding it on 16 May 1968. He later moved to command a rifle platoon and again is said to have distinguished himself.

112. For the purposes of the Distinguished Service Decorations, the Tribunal was of the view that it could be seen that Lieutenant Jensen's distinguished service encompassed the entirety of his deployment as a junior commander in 1968 and was not just confined to his actions on 13 May 1968.

*113. **Distinguished Command.** The Tribunal acknowledges that Lieutenant Jensen was not the Mortar Platoon Commander. However, Defence's simplistic view that command is 'held by a commander' fails to understand the reality of the operational employment of a mortar platoon and is inconsistent with the specific definition in the publication that Defence purported to rely upon to establish 'principles' in order to define command. This definition would suggest that Lieutenant Jensen was in command by virtue of his 'assignment' and accordingly he had the authority and responsibility to 'plan, organise, direct, coordinate and control' the mortar line and its personnel whilst deployed.*

114. The Tribunal was also aware that the platoon commander on operations is not located with the mortar platoon. He is located in the Battalion command post with the Commanding Officer and travels with him. He has no interaction with the mortar line other than to process calls for fire and clearance. The mortar line is commanded by what today is known as the Mortar Line Officer. He is responsible for their positioning, defence, operations and the leadership of the soldiers. The Tribunal was therefore satisfied that Lieutenant Jensen exercised de facto command of the mortar line and was in command by virtue of his assignment.

115. The Tribunal was satisfied that Lieutenant Jensen's command of the mortar line was distinguished. In perilous circumstances, he was able to effectively deal with complexity, coordination multiple direct and indirect fire assets and report calmly and efficiently to his superiors. His command of his soldiers was swift and precise.

*116. **Distinguished Leadership.** There appears to be no dispute that Lieutenant Jensen's leadership was distinguished. Indeed, Defence's own definition; 'the skilfull (sic) application of leadership over others in the most difficult of circumstances' appears to be precisely what he was providing to his soldiers. The Tribunal was satisfied that Lieutenant Jensen's leadership was demonstrably superior to others with similar employment, responsibility and rank such as a standard rifle platoon commander. In the most perilous of circumstances he demonstrated sound judgement, courage and determination and provided an inspirational example for his subordinates. In Lieutenant Colonel Hulse's words, his 'men believed in him and when he made the*

*call to fight, they followed him’.*⁵³

119. When read in context, it is clear that the 2020 Tribunal did not fail to carry through and recommend award of the Distinguished Service Cross – it was simply setting out the position it would have arrived at if it had decided that the eligibility criteria for a Gallantry decoration were not met. It is also clear that the statement that:

For the purposes of the Distinguished Service Decorations, the Tribunal was of the view that it could be seen that Lieutenant Jensen’s distinguished service encompassed the entirety of his deployment as a junior commander in 1968 and was not just confined to his actions on 13 May 1968.

was made as an assessment of the entirety of Lieutenant Colonel Jensen’s actions throughout his tour, including those on 13 May 1968.

120. It is also clear that the conclusion stated by the 2020 Tribunal was arrived at without any in-depth analysis of Lieutenant Colonel Jensen’s service across the full period of his 1968-69 tour. Rather, it was heavily focussed on the events of 13 May 1968 which, it seems, it regarded as heavily influencing assessment of the totality of that tour.

Consideration by the present Tribunal

121. However, it is fundamental to recognise that the situation now facing the present Tribunal is quite different. There has been a Defence decision refusing to recommend Lieutenant Colonel Jensen for the Distinguished Service Cross for his actions over the whole of his tour, and there has been an application for Tribunal review of that decision. The present Tribunal thus has jurisdiction to consider this separate and distinct issue.

122. In order to avoid ‘double-medalling’ for the same actions, it is necessary for the present Tribunal to consider whether Lieutenant Colonel Jensen’s actions in Vietnam during 1968 and 1969 other than those on 13 May 1968 meet the eligibility criteria for the Distinguished Service Cross.

123. In this regard, it is important to note that the policy on ‘double-medalling’ in no way precludes the award of multiple honours across the same tour where each is based on different actions or sets of actions. As Lieutenant Colonel Jensen correctly pointed out at the hearing, the Tribunal had itself recommended an additional honour for a single tour as recently as 8 November 2023 in the matter of *Hartley and the Department of Defence re Wheatley [2023] DHAAT 20*.

⁵³ Ibid.

124. Accordingly, the present Tribunal reviewed Lieutenant Colonel Jensen's service records and all documentation presented in the course of the present review, looking for details about service outside 13 May 1968, and canvassed the issue with Lieutenant Colonel Jensen and his witnesses at the hearing.

125. Setting aside the events of 13 May 1968, based on the submissions made to the Tribunal in connection with the present application, the claim for a Distinguished Service Cross for the balance of Lieutenant Colonel Jensen's tour in Vietnam essentially required an assessment of the following:

- a) His decision to remain at Fire Support Base Coral after the events of 13 May 1968 and not take the available option of returning to Nui Dat with the surviving members of his mortar section;
- b) His reconstitution of the mortar section in the days immediately following 13 May 1968 so that it quickly became a cohesive fighting force;
- c) His performance in commanding and leading the reconstituted section during the subsequent very heavy action at Fire Support Base Coral on 16 May 1968; and
- d) His subsequent performance in commanding and leading a rifle platoon.

125. Lieutenant Colonel Jensen, witnesses he called at the hearing, and a number of documents he submitted expressing the views of others clearly claimed that his service in each of these regards was 'distinguished'. While accepting that each of these views was sincerely held, the Tribunal noted that none was stated in terms that were based on any substantive legal analysis of the Regulations governing the Distinguished Service Cross. The Tribunal considered that it could not accept these views without ascertaining for itself and by its own analysis whether they were sustainable by reference to a proper consideration of those Regulations.

126. The Distinguished Service Decorations Regulations, as amended, provide that:

3. (1) The Distinguished Service Cross shall be awarded only for distinguished command and leadership in warlike operations.

(2) The Distinguished Service Medal shall be awarded only for distinguished leadership in warlike operations.

(3) The Commendation for Distinguished Service shall be awarded only for distinguished performance of duties in warlike operations.

127. The Tribunal considered at some length the meaning of the word ‘distinguished’ in the context of these Regulations in the matter of *Conlon and the Department of Defence [2024] DHAAT 1*. In that report the Tribunal said:

89. At the heart of this assessment is the meaning to be attributed to the term ‘distinguished’. That adjective applies to each of the three Distinguished Service Decorations, the difference between them being the specified actions or qualities that are required to be ‘distinguished’. The Regulations contain no definition of the term, and Defence has never promulgated any internal guidelines to assist its own decision-making. Instead, as Brigadier Bornholt stated, Defence has relied on the position adopted by the Tribunal over time, and has not adopted any higher standard than the Tribunal. In these circumstances, it is appropriate to review the position that has been previously adopted by the Tribunal in ascertaining the meaning of ‘distinguished’ in the eligibility criteria for the various Distinguished Service Decorations.

128. Having reviewed previous cases in which assessment of conduct as ‘distinguished’ had been considered, the Tribunal then said:

98. Accordingly, the Tribunal considered it appropriate to set out the following guidelines in amplification of the concepts of duties or responsibilities which were additional or superior to those normally pertaining to their rank, appointment, employment or position variously used in the previous cases, and it adopted those guidelines to assist it in the conduct of the present review:

a) service involving command and leadership, leadership or performance of duties may be considered to be ‘distinguished’ having regard to actions taken or qualities displayed either:

- i. on a single occasion; or*
- ii. across a longer period such as a rotation, posting/tour or career;*

b) service may be ‘distinguished’ when it involves undertaking significant additional duties over and above those reasonably expected of the individual’s rank or role, provided that all duties are undertaken successfully, authoritatively or in a manner commanding great respect having regard to the degree by which they exceeded the usual expectations of the individual’s rank or role;

c) service may also be ‘distinguished’ notwithstanding that it involves only performing the duties expected of the individual’s rank or role, provided that such performance is clearly superior when compared to the reasonable expectations of the usual performance of others of the same rank, in the same or similar role/s or in similar circumstances:

- i. by significantly exceeding those reasonable expectations on a particular occasion; or*

ii. by meeting the level of reasonable expectation consistently and reliably over an extended period in the most demanding and exceptional circumstances;

d) the concept of superior performance is not met by simply performing better than others on the same occasion or over the same period. Given that others may be performing at a level below what is reasonably expected of them, the proper basis of comparison is by reference to reasonable expectations;

e) in either event, regard should be had to all relevant circumstances such as:

- i. the experience and training of the individual;*
- ii. the size, breadth and complexity of the task performed; and*
- iii. the nature of the environment in which the service was performed; but*

f) even where 'distinguished' service has been performed on an occasion or over a period, because Defence honours and awards are granted in exercise of the Governor-General's discretion and not as a matter of entitlement, it may nevertheless be appropriate to withhold grant of a Distinguished Service Decoration (or any other honour or award) where there are other countervailing factors in an individual's conduct that mean that grant would be inconsistent with the integrity of the Defence honours and awards system.⁵⁴

129. The Tribunal considered it appropriate to adopt these 'Conlon guidelines' in assessing Lieutenant Colonel Jensen's actions in Vietnam other than on 13 May 1968.

130. The Tribunal was in no doubt that the decision to stay at Fire Support Base Coral rather than return to Nui Dat for some respite after the horrendous events of 13 May 1968, and especially having regard to the extent of death of and wounding suffered by over 70 per cent of his platoon, took great personal fortitude, bravery and strength of character. However, the Tribunal considered that, while undoubtedly admirable, that of itself did not demonstrate distinguished command and leadership on which eligibility for the Distinguished Service Cross is based.

131. In relation to reconstitution of his mortar platoon, Lieutenant Colonel Jensen detailed for the Tribunal the immediate and then ongoing replacement troops and equipment that he received on 13 and 14 May. He was reinforced by the 1 RAR reserve mortar section, who were not original members of his battalion but rather mortar trained members left over from 7 RAR who had yet to complete their tour of duty, and members of 3 RAR. In the net result, he ended up with two Mortar APCs and two ground-based Mortars and their crews, all of whom were trained mortar operatives, although they had not all worked together previously together or under him.

⁵⁴ Conlon and the Department of Defence [2024] DHAAT 1.

132. Lieutenant Colonel Jensen said:

I then set about inducting the reinforcements into our platoon. This meant moulding them into a cohesive operational fighting unit whilst regularly under enemy mortar, rocket and HMG fire. They learnt our Standing Operating Procedures 'on the job' whilst live firing in real time at war. We based our SOP's on operational requirements to cover emerging threats. In my situation at FSB Coral, good command and leadership was crucial for our operational effectiveness, unit cohesion, and ultimately this led to successful fire missions. I considered my training and knew that I had a high level of tactical proficiency, decisiveness, and needed to inspire and maintain discipline among my platoon. We were working in a high pressure situation. My platoon were aware that we had just lost 5 KIA and 8 WIA. I insisted on personal readiness as we were called on at no notice to provide fire support at all hours of the day and night, often for prolonged periods.

I issued clear orders when required and constantly went around the mortar line talking to all with a view to enforcing standards as well as building trust and understanding at a time when we were under huge stress in a high risk situation. Every soldier knew their job and their equipment.

I considered that strong command and effective leadership would ensure good cohesion, combat readiness, and operational efficiency. Operating in a war setting quickly instilled confidence and mental toughness in most of my men and ensured adaptability under pressure. A few of my men required more understanding and encouragement for whom I provided individual counselling and support.⁵⁵

133. The Tribunal considered that Lieutenant Colonel Jensen clearly exhibited qualities of leadership and command in reconstituting his mortar platoon so soon after 13 May 1968, particularly to the point where it was ready for what was to transpire on 16 May 1968. But, by reference to paragraph (b) of the Conlon guidelines, the Tribunal considered that this did not involve *undertaking significant additional duties over and above those reasonably expected of the individual's rank or role*. And, by reference to paragraph (c) of those guidelines, while this involved *performing the duties expected of the individual's rank or role*, that performance was not clearly superior ... *by significantly exceeding those reasonable expectations on a particular occasion*. While reconstitution of the platoon and remaining on duty while overcoming the traumatic events of 13 May 1968 showed remarkable personal strength and resilience, the Tribunal considered that the reasonable expectation would be that any officer should be capable of displaying attributes of this nature. Accordingly, the Tribunal did not consider Lieutenant Colonel Jensen's reconstitution of the mortar platoon, of itself, to have been distinguished.

⁵⁵ Lieutenant Colonel Jensen's Application to the Chief of Army, June 2024.

134. In relation to the battle of 16 May 1968, Lieutenant Colonel Jensen said:

On 16 May an NVA Regiment again attacked FSPB Coral. We fired some 2700 round in support of A Company 1 RAR who were attacked and partly overrun. My mortars fired a “danger, danger close” mission for Lieutenant Neil Weekes at the direction of CO 1 RAR as Weekes counter attacked and retook his platoon position in A Company from the NVA. There had been heavy rain a day before and my Command Post was flooded and had to be rebuilt and the two mortars on the ground had to be rebidged. This entailed digging oy the mud under the baseplate and replacing it with a number of compacted, filled sand bags. These two mortars had to be dug out twice during our Fire Mission in support of A Company. The whole of FSPB Coral was under mortar, rocket, HMG and small arms fire throughout this attack.

We were constantly providing indirect fire support to battalion fighting patrols which were in contact with the NVA. Some of these were very large battles often involving one of our companies supported by APC’s and usually tanks from C Sqn 1 Armd Regt. These battles usually ran over a number of hours during which we provided “danger close” indirect fire support. This require constant oversight as it entailed meticulous care in siting and fifying the mortars as our rounds were falling about 25 m from the troops in contact killing the enemy and also “escorting” the companies, who were trying to make a clean break from the enemy, when they were in danger of being surrounded.

Throughout our time as FSPB Coral we were constantly subjected to harassing fire from NVA mortars and rockets usually by night.⁵⁶

135. The Tribunal had no doubt that the engagement with the enemy on 16 May 1968 was major, intense and prolonged. The fact that Lieutenant Colonel Jensen’s platoon fired approximately 2,700 mortar rounds makes that clear. But the Tribunal was not convinced that it involved more than what would otherwise have been expected of a mortar platoon in an engagement of that nature. Unlike on 13 May 1968, Lieutenant Colonel Jensen’s platoon was not located on the boundary, was not isolated or undefended, and was not itself overrun by the enemy. Rather, it seems that the mortar platoon under his control did what was expected of it, albeit at the fullest level of such expectation. Again, by reference to paragraph (b) of the Conlon guidelines, the Tribunal considered that this did not involve *undertaking significant additional duties over and above those reasonably expected of the individual’s rank or role*. And, by reference to paragraph (c) of those guidelines, while this involved *performing the duties expected of the individual’s rank or role*, that performance was not *clearly superior ... by significantly exceeding those reasonable expectations on a particular occasion*.

⁵⁶ Ibid.

Accordingly, while clearly accepting that Lieutenant Colonel Jensen and his mortar platoon performed admirably on 16 May 1968, the Tribunal did not consider his performance to have been distinguished.

136. In relation to his time as a rifle platoon commander, Lieutenant Colonel Jensen said:

I marched into 8 Platoon C Company 1 RAR on 26 July 1968. This was my first appointment as a rifle platoon commander. On 1 August 68 during Operation Platypus, we contacted the VC whilst breaking harbour and I had one WIA who needed "Dustoff". Three days later on 4 August we had another contact when my platoon sergeant and two soldiers were hit by RPG shrapnel needing 'Dustoff'. We shot 1 VC. Later on Operation Hawkesbury we had another contact on 8 October on the edge of a bunker system where we shot one VC KIA and I had another two soldiers KIA.

While giving evidence on the floor of my DHAAT hearing, Captain Mick Bindley gave sworn evidence to the effect that, as a platoon commander on operations, my performance was better than others and at the distinguished level. This was during the period November/December 1968 when I showed that I had learnt from previous contacts and applied tactical ingenuity to a number of very successful instant ambushes even though I had a reduced platoon strength of approximately 15 to 22. I have a good eye for ground and had achieved good surprise as well as speed and initiative, i.e. I made the decision, sited the ambush, killed the enemy, cleaned up, got a clean break using artillery and mortar indirect fire support for suppression of enemy activity or as cut off for escaping enemy. Some of those contact dates were:

- a. 12 Dec 68 1 VC KIA*
- b. 15 Dec 68 3 VC KIA*
- c. 19 Dec 68 1 VC KIA*
- d. 20 Dec 68 1 VC KIA*
- e. 20 Dec 68 3 VC KIA*
- f. 20 Dec 68 1 VC KIA⁵⁷*

137. Lieutenant Colonel Jensen provided:

- a) a statement from Mr Barrett, which referred to a very successful ambush by 8 Platoon under Lieutenant Jensen's command. Lieutenant Jensen's bravery under fire while leading this ambush was exemplary; and*

⁵⁷ Ibid.

- b) a statement from Mr Eatock which referred to *the remarkable leadership and resilience that Jensen displayed at the time. I found that experience as inspirational and my confidence in our officers increased as result. However, after Lieutenant Jensen had taken over 8 Platoon and I had daily contact with him, I was to experience his leadership and command personally and consider him to be one of the finest officers of my career.*⁵⁸

138. Lieutenant Colonel Jensen also noted that, while rifle platoon commander, he and his soldiers topped the ‘kill list’ on a number of occasions. However, the Tribunal was not convinced that that fact, of itself, must have been due only to his leadership and considered there could have been any number of unrelated factors influencing such an outcome. However, the Tribunal noted that, even if that result was a reflection of and due to his leadership, paragraph (d) of the Conlon guidelines provided that *the concept of superior performance is not met by simply performing better than others on the same occasion or over the same period. Given that others may be performing at a level below what is reasonably expected of them, the proper basis of comparison is by reference to reasonable expectations.*⁵⁹

139. While acknowledging that Lieutenant Colonel Jensen had shown himself to be an efficient, innovative and successful rifle platoon commander, by reference to paragraphs (b) and (c) of the Conlon guidelines the Tribunal was not satisfied that he thereby performed *duties over and above those reasonably expected of the individual’s rank or role* or that he performed expected duties either *by significantly exceeding those reasonable expectations on a particular occasion* or *by meeting the level of reasonable expectation consistently and reliably over an extended period in the most demanding and exceptional circumstance.*

140. Accordingly, the Tribunal did not consider that, of itself, Lieutenant Colonel Jensen’s performance as a rifle platoon commander warranted recognition under the Distinguished Service Regulations.

141. The Tribunal then considered whether, taken together rather than individually, these four aspects of his tour in Vietnam (that is, apart from the events of 13 May 1968) warranted recognition by the Distinguished Service Cross or, alternatively, by another honour under the Distinguished Service Regulations. It concluded however that they did not.

142. The Tribunal recognised that the above conclusions can be seen as contradicting the views expressed by those who offered support to Lieutenant Colonel Jensen in his claim for a Distinguished Service Cross, either in their written statements or their oral testimony in which they clearly regarded his service as ‘distinguished’. But, as noted above, it was the case that these expressions of support were not accompanied by any substantive legal analysis of the Distinguished Service Regulations and the meaning of

⁵⁸ Ibid.

⁵⁹ Conlon and the Department of Defence [2024] DHAAT 1.

the terms used in them, and the Tribunal was obliged to form its own views by such analysis alone.

143. As a result, the Tribunal concluded that it could not recommend to the Minister that Lieutenant Colonel Jensen should be awarded the Distinguished Service Cross which he sought for his service during the whole of his tour of Vietnam in 1968 and 1969 (other than that on 13 May 1968, in recognition of which he has already been awarded the Medal of Gallantry).

TRIBUNAL DECISION

144. In light of the above analysis, the Tribunal decided to recommend to the Minister that he should affirm the decisions that Lieutenant Colonel Jensen MG not be recommended for either the Victoria Cross for Australia or the Distinguished Service Cross.

145. In reaching that conclusion, however, the Tribunal wished to stress that in no way should its decision be regarded as reflecting adversely in any way on either his remarkable achievements on 13 May 1968 or his admirable performance of duties during the balance of his tour of Vietnam in 1968 and 1969.