



# Australian Government

## Defence Honours and Awards Appeals Tribunal

### **Miller and the Department of Defence re Miller [2026] DHAAT 5 (31 March 2026)**

**File Number** 2024/025

**Re** **Mr Mark Miller on behalf of the late  
Warrant Officer Class One Eric Francis Miller**  
Applicant

**And** **The Department of Defence**  
Respondent

**Tribunal** Mr Jonathan Hyde (Presiding Member)  
Air Commodore Anthony Grady AM (Retd)  
Brigadier Dianne Gallasch AM CSC (Retd)

**Hearing Date** 13 Oct 2025 and 19 Nov 2025

**Appearances** Mr Mark Miller (13 Oct 25 and 19 Nov 25)  
Applicant

Mrs Allison Augustine (13 Oct 25)  
Director, Honours and Awards, Defence

Mr Tyson Pan (13 Oct 25)  
Assistant Director, Honours and Recognition, Defence  
For the respondent

Mr Pan (19 Nov 25)  
Mrs Jen Robinson (19 Nov 25)  
Manager, Honours Reviews, Defence  
For the respondent

### **DECISION**

On 31 March 2026, the Tribunal decided to recommend that the Minister:

- a. affirm the decision to not recommend Warrant Officer Miller for an Australian Gallantry Decoration; and

- b. set aside the decision to not recommend Warrant Officer Miller for a Distinguished Service Decoration and recommend Warrant Officer Miller for the Commendation for Distinguished Service.

## **CATCHWORDS**

*DEFENCE HONOUR* – Australian Gallantry Decorations – Australian Distinguished Service Decorations - Vietnam War – 1965 - Australian Army Training Team Vietnam - whether evidence available to consider recognition – US Bronze Star with V Device already awarded

## **LEGISLATION**

*Defence Act 1903* – Part VIIIIC – Sections 110T, 110V(1), 110VB(1), 110VB(6)

*Defence Regulation 2016* - Section 35

### **Australian Gallantry Decorations**

*Commonwealth of Australia Gazette S25*, of 4 February 1991, *Gallantry Decorations Regulations, Letters Patent and Regulations*.

*Commonwealth of Australia Gazette S420*, of 6 November 1996, *Amendment of the Gallantry Decorations Regulations*.

### **Australian Distinguished Service Decorations**

*Commonwealth of Australia Gazette S25* of 4 February 1991, *Letters Patent for Distinguished Service Cross, Distinguished Service Medal and the Commendation for Distinguished Service*.

*Commonwealth of Australia Gazette S18* of 22 February 2012, *Amendment to the Letters Patent for Distinguished Service Cross, Distinguished Service Medal and the Commendation for Distinguished Service*.

## **Introduction**

1. The Applicant, Mr Mark Miller, seeks review of a decision of the Department of Defence (Defence) dated 16 September 2024 that his father, the late Warrant Officer Class One Eric Francis Miller, not be recommended for an Australian Gallantry Decoration or an Australian Distinguished Service Decoration for his service in Vietnam between 5 May 1965 and 30 April 1966. Warrant Officer Miller was previously awarded the United States Bronze Star with ‘V’ Device for this service.

## **Decision under review**

2. On 10 August 2022, Mr Miller made an application to Defence seeking to have his late father recognised for the above service. On 16 September 2024, Defence wrote to Mr Miller refusing his application. In doing so, Defence stated that it had reviewed Mr Miller’s application against the eligibility criteria for the Australian Gallantry Decorations and the Australian Distinguished Service Decorations. On 24 December 2024, Mr Miller made application to the Tribunal seeking review of that decision.<sup>1</sup>

## **Tribunal jurisdiction**

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

3. As required by s110VB(6) of the Act, in reviewing the reviewable decision, the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision. The Tribunal does not have the power to affirm or set aside the reviewable decision, but may make any recommendations to the Minister that it considers appropriate.

## **Conduct of the review**

4. In accordance with its Procedural Rules, on 9 January 2025 the Tribunal wrote to Defence’s Secretary informing him of Mr Miller’s application for review. The Tribunal requested a merits-based assessment of Warrant Officer Miller’s actions against the eligibility criteria for the honours concerned and a report on the material questions of fact

---

<sup>1</sup> Mr Mark Miller Application to Tribunal dated 24 December 2024.

and reasons for the decision to refuse the original application. The Tribunal also requested that the Secretary provide copies of the documentation relied upon in reaching the decision and any other relevant documents.<sup>2</sup>

5. On 3 April 2025, the Director of Honours and Awards in Defence provided a submission on behalf of Defence.<sup>3</sup>

6. The Defence submission was provided to Mr Miller for comment on 9 April 2025.<sup>4</sup> Mr Miller responded with his comments on 14 and 18 April 2025.<sup>5</sup> The Tribunal initially heard the matter on 13 October 2025. However, during that hearing, Mr Miller advised that he did not have all of the relevant documents before him, so the matter was adjourned until 19 November 2025 to allow Mr Miller to receive and review the materials. Due to a range of factors, primarily a lack of supporting evidence concerning Warrant Officer Miller's service, Defence and the Tribunal undertook extensive research over the course of this review.

### **Warrant Officer Miller's service**

7. Warrant Officer Miller's service records reveal that he enlisted in the Citizens Military Forces (National Service) on 19 August 1953. He was discharged on 23 November 1954 to enlist in the Australian Army on 24 November 1954.<sup>6</sup> Warrant Officer Miller discharged from the Army on 11 December 1980 having served for 20 years, with his final rank as Warrant Officer Class One. On 6 July 1982 Warrant Officer Miller joined the Army Reserve, serving until he was discharged at his own request on 7 July 1987.<sup>7</sup>

8. Warrant Officer Miller's overseas service relevant to this review comprised service in South Vietnam, with the Australian Army Training Team Vietnam (AATTV), from 7 May 1965 to 30 April 1966. While not directly relevant to this review, he also served in Vietnam with the 8<sup>th</sup> Battalion, the Royal Australian Regiment from 17 November 1969 through to 12 November 1970.<sup>8</sup>

9. Warrant Officer Miller's service in Vietnam with the AATTV was as a temporary Warrant Officer Class Two. His service records document that he was a substantive Corporal who was promoted to temporary Sergeant on 14 December 1964. He was then promoted to temporary Warrant Officer Class Two on 28 April 1965 and he then deployed to Vietnam on 19 May 1965. He was promoted to substantive Sergeant (while

---

<sup>2</sup> Letter, Tribunal to Defence dated 9 January 2025.

<sup>3</sup> Letter, Defence to Tribunal dated 9 January 2025.

<sup>4</sup> Letter, Tribunal to Mr Miller, dated 9 April 2025.

<sup>5</sup> Email Mr Miller to the Tribunal, dated 14 & 18 April 2025.

<sup>6</sup> WO1 Miller's Service record-Attestation Form-Regular Army signed 24 November 1954.

<sup>7</sup> WO1 Miller's service record, Australian Army Record of service card #2.

<sup>8</sup> Nominal roll of Vietnam Veterans, accessed 4 August 2025.

still a temporary Warrant Officer Class Two) on 1 July 1965, six weeks after his arrival in Vietnam as a substantive Corporal.

10. For his service, Warrant Officer Miller was awarded the following:
- a) Australian Active Service Medal 1945-1975 with Clasps 'MALAYA' 'THAI/MALAY' and 'VIETNAM';
  - b) General Service Medal 1918-1962 with Clasp 'MALAYA';
  - c) Vietnam Medal;
  - d) Australian Service Medal 1945-1975 with Clasp 'PNG' and 'SE ASIA';
  - e) Defence Force Service Medal with First Clasp;
  - f) National Medal with First Clasp;
  - g) Australian Defence Medal;
  - h) Long Service and Good Conduct Medal;
  - i) Anniversary of National Service Medal;;
  - j) Republic of Vietnam Campaign Medal;
  - k) United States of America Meritorious Unit Citation;
  - l) United States Bronze Star with 'V' Device;
  - m) Republic of Vietnam Cross of Gallantry with Palm Unit Citation;
  - n) Pingat Jasa Malaysia;
  - o) Returned from Active Service Badge; and
  - p) Infantry Combat Badge<sup>9</sup>.

### **The Australian Army Training Team Vietnam**

11. Defence in its report to the Tribunal stated the following:<sup>10</sup>

*The AATTV was a specialist unit of military advisors of the Australian Army who served during the Vietnam War. Raised in 1962, the unit was formed solely for service as part of Australia's contribution to the war, providing training and assistance to South Vietnamese forces. Initially numbering only approximately 30 men, the size of the unit grew several times over the following years as the Australian commitment to South Vietnam grew, with the unit's strength peaking at 227 in November 1970. Members of the team worked individually or in small groups, operating throughout the country from the far south to the Demilitarized Zone (DMZ) in the north. Later they were concentrated in Phước Tuy Province as Australian forces prepared to withdraw from Vietnam.*

---

<sup>9</sup> Letter, Defence to the Tribunal *Defence report on Warrant Officer Class Two Eric Miller*, dated 3 March 2025, Para 12.

<sup>10</sup> Defence Report – Research report and merit assessment of the actions of Warrant Officer Class Two Eric Miller, Jen Robinson dated 13 September 2024. This information was summarised from <https://www.awm.gov.au/collection/U53430>.

12. Defence further stated:

*One of the roles of the AATTV was to instruct the Army of the Republic of Vietnam in jungle warfare and other military skills. The AATV were attached to units as advisors, trainers and occasionally leaders. While initially they were not permitted to accompany the Army of the Republic of Vietnam on operations, from 1964 they did go on combat operations and assisted with artillery fire support coordination. They worked with various groups from the US, such as US Special Forces and the Central Intelligence Agency, and under the auspices of the already established US Army Advisory system, throughout South Vietnam.*<sup>11</sup>

13. The Department of Veterans' Affairs website states the following in relation to the AATTV:

*Until 1964 AATTV personnel were forbidden from joining those whom they trained on operations, a ban that proved completely impractical when they were caught in ambushes and which diminished their credibility in the eyes of their students. After the policy changed, allowing participation in operations, AATTV members often found themselves engaged in combat more fierce than that experienced by most other Australian units in South Vietnam. By 1965 AATTV advisers were accompanying South Vietnamese Units on patrol and helping defend bases from attack. Designated as trainers they were often leaders, demonstrating military and counter-insurgency skills in the heat of battle.*<sup>12</sup>

### **Mr Miller's application to Defence**

14. As outlined above, on 10 August 2022, Mr Miller wrote to Defence stating that while serving as an adviser in Vietnam, his late father was awarded the US Bronze Star with Combat 'V'. Mr Miller said that he was seeking an equivalent Australian award to be presented to his family. Mr Miller included a copy of a 1966 letter from then US 1<sup>st</sup> Lieutenant Jack D. Ragsdale Jr, a Senior Advisor with the 1<sup>st</sup> Battalion, 51<sup>st</sup> Infantry Regiment of the Army of the Republic of Vietnam, concerning Warrant Officer Miller's service and recommending him for an award *equivalent to that of the Bronze Star for Meritorious Service*. The letter was supported by US Major Samuel H. Jopling, Senior Advisor with the 51<sup>st</sup> Infantry Regiment, Lieutenant Colonel Gerald G. Coady, Senior Advisor, Armour, Quang Nam Special Sector, and Colonel Frank Quante Jr, Deputy Commander of the I Corps Advisory Group. While 1<sup>st</sup> Lieutenant Ragsdale had originally directed his letter to the Commander of the Australian Army Training Team, Colonel Quante had directed the letter to Headquarters, United States Military Command,

---

<sup>11</sup> Defence Report – *Research report and merit assessment of the actions of Warrant Officer Class Two Eric Miller*, dated 13 September 2024. . This information was summarised from <https://www.awm.gov.au/collection/U53430>.

<sup>12</sup> Website, Department of Veterans Affairs, Anzac Portal, the Australian Army Training Team Vietnam, accessed 11 March 2026.

Vietnam, who then directed it to the *Commander of the Australian Army Force Vietnam*, in Saigon, *for consideration of an appropriate Australian award.*<sup>13</sup>

15. The recommendation includes the following set out in full below:

***Office of the Senior Advisor, Quang Nam Special Sector Advisory Team 1,  
MACV APO US Forces 96337. 23 January 1966***

*Subject: Recommendation for Award*

*Thru: Commander, I Corps Advisory Group, APO US Forces 96337*

*To: Commander, Australian Army Training Team, APO US Forces 96243*

*1. I would like to recommend that one of your Warrant Officers be considered for an award equivalent to that of the Bronze Star for Meritorious Service.*

*2. WOII Eric F. Miller, 28886, Australian Regular Army, served as an Infantry Light Weapons Advisor to the 1<sup>st</sup> Battalion, 51<sup>st</sup> Regiment, Army of the Republic of Vietnam from 19 May 1965 to 16 October 1965. During this period he distinguished himself as an outstanding Warrant Officer and as a great asset to the advisory effort.*

*3. In his role as advisor, Mr Miller continually demonstrated professional competence, a thorough knowledge of his duties and a devotion to his work that drew praise and respect from his Vietnamese counterparts as well as the other members of the advisory team.*

*4. Mr Miller's intelligence, experience, initiative and maturity contributed significantly to the advisory effort within the battalion. His technical competence and demonstrated job proficiency continually reflected the highest degree of military professionalism.*

*5. During numerous ground operations against hostile forces Mr Miller's calm, sure and deliberate actions helped to instil a high morale and willingness to fight within the ranks of the soldiers he was advising. During these engagements, he often times exposed himself to hostile fire to insure that maximum fire power was obtained from the unit's weapons.*

*6. On 7 September 1965 the Battalion was conducting an operation when it was attacked by a Viet Cong Battalion while in a night defensive position. The Viet Cong unit employed all the weapons organic to a battalion-sized unit during this attack. Mr Miller continually exposed himself to hostile fire in order to advise his counterparts in employment of weapons and troops and was instrumental in keeping the units of the battalion in position when it appeared that they might be overrun. Through these actions the unit was able to hold its position against the numerically superior Viet Cong force. The enemy force finally broke contact and withdrew, carrying many of their dead and wounded with them, while at the same time, the ARVN casualties were kept to a minimum.*

---

<sup>13</sup> Letter of the Senior Advisor Quang Nam Special Sector, Advisory Team #1, MACV, APO, US Forces 96337, 1<sup>st</sup> Lieutenant Jack D. Ragsdale Jr, Senior Advisor to Commander Australian Army Training Team, dated 23 January 1966.

7. When Mr Miller joined the unit, the state of training was very low. The majority of the soldiers were replacements and had never trained with the unit. Mr Miller was instrumental in beginning a small unit training program under the adverse conditions of limited space and time. As a result of this, the level of the unit's training was brought up to the highest level possible and the unit was made more effective during field operations.

8. WOII Miller's ability to accomplish any mission given him and to take the initiative and do the job when there was a job to be done in such a manner as to gain the respect and admiration of his Vietnamese, American and Australian associates alike, is a continuing example of his professional competence, leadership, personal integrity and concern for the welfare of the people he was assisting. WOII Miller's service as an advisor to the Army for the Republic of Vietnam reflects great credit upon himself and the Australian Regular Army.

Signed by: Jack D. Ragsdale Jr, 1<sup>st</sup> Lt, Infantry Senior Advisor 1sr Bn, 51<sup>st</sup> Regiment<sup>14</sup>

**MACTN-QNSS 23 Jan 66 1st Ind**

**Subject: Recommendation for Award**

Senior Advisor, 51<sup>st</sup> Infantry Regiment, Advisory Team 1, MACV, APO US Forces 96337

To: Senior Advisor, Quang Nam Special Sector, Advisory Team 1, MACV, APO US Forces 96337

1. Recommend approval
2. Warrant Officer Miller's accomplishments reflect great credit not only upon himself but upon the Army of which he is a member. He has contributed greatly toward accomplishing the mission of the Free World Military Assistance Forces in Vietnam.

Signed by: Samuel H. Jopling, Major, Infantry Senior Advisor

**MACTN-QNSS 23 Jan 66 2nd Ind**

**Subject: Recommendation for Award**

Senior Advisor, Quang Nam Special Sector, Advisory Team 1, MACV, APO US Forces 96337

TO: Commander, I Corps Advisory Group, Advisory Team 1, MACV APO US Forces 96337

1. Throughout both of WO Millers assignments as an advisor with the 51<sup>st</sup> Infantry Regiment and here in Quang Nam Special Sector Headquarters as an RF/PF advisor he has displayed initiative, intelligence and ability of the highest order. He has gained the complete confidence and respect of the Vietnamese with whom he had worked. His military knowledge and skill are evident to all, and his

---

<sup>14</sup> The Tribunal, through the Secretariat made direct contact with Mr Ragsdale, however Mr Ragsdale was unable to recall any detail of the events in connection with Warrant Officer Miller.

*advice and aid are sought and accepted by his counterparts when-ever a difficult or unusual problem arises. WO Miller's demonstrated professional competence, devotion to duty and other soldierly qualities reflects great credit upon the United States Military Assistance Command, Vietnam and his efforts have contributed significantly toward the accomplishment of its mission.*

2. *Recommend approval.*

*Signed by Gerald G. Coady, LTCOL, Armour Senior Advisor*

***MACTN-ICAG MILLER, Eric F. 3d Ind 23 Jan 66***

***Subject: Recommendation for Award***

***Headquarters, I Corps Advisory Group, Advisory Team 1, APO US Forces 96337***

***To: COMUSMACV, Attn: MACAG-PA, APO US Forces 96243***

*Recommend approval.*

*For the Commander:*

*Frank Quante, Jr. Colonel Artillery Deputy Commander<sup>15</sup>*

16. Mr Miller also included a copy of a listing of information *found in Australia* which indicated that Warrant Officer Miller had been awarded the United States Bronze Star with 'V' Device. Defence later confirmed that this document is an extract from a list contained in an Australian War Memorial File.<sup>16</sup>

### **Defence response to Mr Miller**

17. On 16 September 2024, Defence informed Mr Miller in written correspondence that it would not be recommending a posthumous honour from either the Gallantry or Distinguished Service Decorations suites of honours for Warrant Officer Miller's service from 19 May 1965 to 16 October 1965.<sup>17</sup> It said that, at the time of Warrant Officer Miller's service, policy relevant to foreign awards stated that recommendations for a US award should be referred to Australian authorities for consideration of an equivalent Australian award (which at the time, would have been an Imperial award). Defence went on to state that *the equivalent Imperial award would have been a Military Medal.*<sup>18</sup>

---

<sup>15</sup> Correspondence from Senior Advisor, Quang Nam Special Sector, Advisory Team 1, MACV, APO US Forces 96337 to Commander I corps Advisor Group, Advisory Team 1, MACV APO US Forces 96337-to recommend approval to WO Miller for Bronze Star Meritorious Service award, dated 23 January 1966.

<sup>16</sup> Consolidated list of American awards to Australian personnel as at 01/04/1972, Honours and Awards Cross of Gallantry, Section 5-Awards for which citations are not held at MACV. AWM276 R445/4/34 page 54.

<sup>17</sup> Letter via email, Defence to Mr Mark Miller, dated 16 September 2024, in response to Mr Mark Miller's application to Defence for recognition for service in Vietnam on behalf of his father Warrant Officer Eric Miller, dated 10 August 2022.

<sup>18</sup> Defence Report – Research report and merit assessment of the actions of Warrant Officer Class Two Eric Miller, Jen Robinson dated 13 September 2024.

18. Defence cited the eligibility criteria for the Military Medal and stated that, as the Imperial Honours and Awards system was no longer in use, it considered Warrant Officer Miller's service for awards within the Australian Honours and Awards system. It went on to state that, while a search for information regarding Warrant Officer Miller's actions had been undertaken, there was no information on file reflecting his actions during the period July 1965 to December 1967, or specifically for 7 September 1965.

19. Defence stated that, in the absence of additional information, it had considered Warrant Officer Miller's actions from the narrative provided by 1st Lieutenant Ragsdale for both the Gallantry and Distinguished Service suite of awards.<sup>19</sup> It stated that the details supplied in the 'Recommendation for Award' series of messages conveyed the impression Warrant Officer Miller was professionally competent, demonstrated initiative and was well regarded by his colleagues. It stated that the only specific example of his service in the recommendation for his actions was on 7 September 1965, as detailed below:

*He continually exposed himself to hostile fire in order to advise his counterparts in employment of weapons and troops and was instrumental in keeping the units of the battalion in position when it appeared that they might be overrun.*<sup>20</sup>

20. As to Warrant Officer Miller's eligibility for a gallantry award, Defence provided an excerpt from the eligibility criteria for the Australian Gallantry Decorations, which relevantly provide:

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

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

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

21. Defence further stated:

*The limited and non-specific nature of the description fails to suggest WO2 Miller was exposed to more danger than the rest of the patrol or that he was the only one who managed to perform his duties in hazardous circumstances. WO2 Miller's actions in performing his duties under fire, given his training, experience and role, could be considered brave and professional but not necessarily gallant.*<sup>21</sup>

22. Defence went on to state that based on the material presented and available, Warrant Officer Miller's actions did not meet the threshold for a Gallantry Decoration.<sup>22</sup>

---

<sup>19</sup> Letter via email, Defence to Mr Mark Miller, dated 16 September 2024, in response to Mr Mark Miller's application to Defence for recognition for service in Vietnam on behalf of his father Warrant Officer Eric Miller, dated 10 August 2022.

<sup>20</sup> Defence Research Report and merit assessment dated 13 September 2024.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

23. Regarding Warrant Officer Miller's eligibility for a Distinguished Service Decoration, Defence provided an excerpt from the eligibility criteria for the Australian Distinguished Service Decorations, which relevantly provide:

*(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 may be awarded for distinguished performance of duties in warlike operations.*

24. Defence further said:

*The description of his service in the recommendation only mentions leadership in relation to WO2 Miller activities once and only in very general terms. Predominantly his service is described as being in an advisory role with no specific details of leadership, therefore, his actions cannot be assessed against the Distinguished Service Cross or the Distinguished Service Medal... WO2 Miller was performing the duties he was trained to do albeit under difficult circumstances.<sup>23</sup>*

25. In conclusion Defence said that on this basis Warrant Officer Miller's actions did not meet the eligibility criteria for a Distinguished Service Decoration.

### **Mr Miller's application to the Tribunal**

26. Mr Miller's application to the Tribunal included copies of the United States documents that had been previously supplied to Defence, along with the Defence refusal letter.

27. Mr Miller disputed the Defence assessment of his late father's service, both as to his eligibility for a gallantry award and a Distinguished Service Decoration. In respect of gallantry, Mr Miller said:

*The Star of Gallantry shall be awarded only for acts of great heroism or conspicuous gallantry in action in circumstances of great peril. So, when you read WO2 Miller continually exposed himself to hostile fire in order to advise his counterparts in employment of weapons and troops and was instrumental in keeping the units of the battalion in position when it appeared that they might be overrun. Can you honestly say that doesn't meet the criteria. I think you would describe that as like.*

---

<sup>23</sup> Ibid.

28. As to distinguished service, Mr Miller said:

*I see that my father's service is described as being an advisory role with no specific details of leadership, are we reading the same thing? You also wrote he was performing the duties he was trained to do. Albeit under difficult circumstances. Difficult circumstances that's an understatement. You also seem to think that continually exposing to hostile fire is something you are trained for, I don't think so. You either have that in you or you don't you cannot train for that. My father was one of those rare leaders who cared about his men more than himself. They were fighting against a numerically superior Viet Cong force, so one Australian on his own trying to keep his men in position and keep fighting when they were known to run when things got dangerous. This takes a special leader and soldier, so how can you say he was not in a leadership role.*

*Please explain to me how my father can be awarded for the Bronze Star for Valour, America's fourth highest award be recommended for the Australian equivalent by our officers....*

*And still not be awarded anything by his own country...now since we have no information on file why is it that we don't take the recommendation of the officers who were there.<sup>24</sup>*

### **The Defence report**

29. In its report, Defence provided a research and merit assessment of the actions of Warrant Officer Miller against the Gallantry and Distinguished Service Decorations that was used as the basis for making the decision under review. In its summary of the key points from that report, Defence stated:<sup>25</sup>

#### ***Australian Foreign Award Policy***

- a) *Policy regarding foreign awards at the time... states that recommendations for a US award should be referred to Australian authorities for consideration for an equivalent Australian award (at the time, this would have been considered an Imperial award). No formal record exists that the US recommendation for WO2 Miller to receive the imperial equivalent to the Bronze Star for Meritorious Service was ever submitted to the relevant Australian authority in compliance with policy for foreign awards at this time.*

#### ***Bronze Star Medal***

- b) *On 4 February 1944, the Bronze Star Medal was established as a US medal awarded to recognise either heroic achievement, heroic service, meritorious achievement, or meritorious service in a combat zone. When the medal is awarded by the Army, Air Force, or Space Force for acts of valour in combat,*

---

<sup>24</sup> Mr Miller's application to the Tribunal.

<sup>25</sup> Letter, Defence to the Tribunal, *Defence report on Warrant Officer Class Two Eric Miller*, dated 3 March 2025.

*the "V" device is authorized for wear on the medal.*

### ***The Recommendation and Merit Assessment***

- c) *The recommendation for a Bronze Star as recorded in Attachment A-03 outlines WO2 Miller should be considered for a Bronze Star for meritorious service as he 'continually exposed himself to hostile fire'. Although the original nomination was for meritorious service, this would appear more aligned to the Bronze Star with valour. As such, the actions described were assessed against the regulations for the awarding of a Gallantry or Distinguished Service Decoration.*

### ***The Outcome – Gallantry Decorations***

- d) *Following the guidance of the Gallantry Regulations and the Tribunal definition of gallantry, can WO2 Miller's actions in 'continually exposing himself to hostile fire in order to advise his counterparts in employment of weapons and troops' be considered acts of gallantry? The limited and non-specific nature of the description fails to describe how WO2 Miller was exposed to more danger than the rest of the patrol; did more than what was expected of someone of his role, rank or responsibility; or if he was the only one who managed to perform his duties in hazardous circumstances. WO2 Miller's actions in performing his duties under fire, given his training, experience and role, could be considered brave and professional but not necessarily gallant. Many, if not all of WO2 Miller's colleagues in the Australian Army Training Team Vietnam (AATTV) performed similar roles and conducted themselves in a similarly exemplary manner, but relatively few were considered to be gallant. On the basis of the available material presented, Defence assesses WO2 Miller's actions do not meet the threshold for a Gallantry Decoration.*

### ***The Outcome – Distinguished Service Decorations***

- e) *The description of his service in the recommendation only mentions leadership in relation to WO2 Miller's activities once and only in very general terms. His service is described as being in an advisory role with no specific details of leadership, therefore, his actions do not meet the regulations for the Distinguished Service Cross or Distinguished Service Medal.*
- f) *Additionally, there is no specific examples of when WO2 Miller demonstrated actions that would be considered over and above what was expected of a WO2 of his experience and training in the AATTV role. In the battle on the 7 September 1965, while exposed to hostile fire, he advised on employment of weapons and troops and was 'instrumental' in keeping the units of the battalion in position. It is considered that WO2 Miller was performing the duties he was trained to do albeit under difficult circumstances. Defence does not believe his actions meet the threshold for a Distinguished Service Decoration.<sup>26</sup>*

---

<sup>26</sup> Letter, Defence to the Tribunal *Defence report on Warrant Officer Class Two Eric Miller*, dated 3 March 2025.

30. Defence stated that, in its preparation of the report to the Tribunal, that it had considered the original assessment and decision made on 16 September 2024 along with the additional comments provided by Mr Miller in his Tribunal application. It went on to state that after careful consideration, it was Defence's decision not to recommend Warrant Officer Miller for an honour from the Gallantry or Distinguished Service Decorations from the contemporary Australian Honours and Awards system that is equivalent to a US Bronze Star Medal with 'V' Device.<sup>27</sup>

### **Defence Research Report and Merit Assessment**

31. Included with the Defence report was a Research Report and Merit Assessment into the Nomination for Recognition of Warrant Officer Class Two Miller which was used in the assessment of the decision under review following the making of Mr Miller's application to the Tribunal. Notably, it stated:

*A review of WO2 Miller's Personnel file and relevant Australian honours and awards files for the period has not located a nomination for an Australian honour...*

*Defence has been advised by WO2 Miller's family that he was awarded the Bronze Star with 'V' Device...*

*The AWM document has WO2 Miller listed as awarded the Bronze Star with 'V' Device in a file headed "Awards for which Citations are not held at MACV"*

*WO2 Miller was wounded in action on 8 September 1965. The injury is described as a "slight fragment wound in back" sustained in Quang Ngai province Vietnam. The wound was dressed and WO2 Miller remained on duty...*

*AWM98 R723/1/35 Part 1 Pg 285 records incidents on 21 August 1965 35 Km west of Hoi An – Operation mounted by 1/4 Bn (WO Miller) and 3/4 Bn. Two ARVN soldiers MIA (Pg 286). And on 24 August 1965 20K west of Hoi An 1/4 (WO Miller), 3/4 Bn and 4/4 APC carried out a search and destroy operation in the vicinity of the mountain AN LAC. Three ARVN MIA. Enemy losses unknown...*

*The AATTV narrative for the period July 1965 to December 1967 (AWM98 R723/1/35 Part 1) does not contain records for September 1965. No additional records were found describing WO2 Miller's actions over this period...*

*The recommendation provided by the applicant was for the award of a Bronze Star for meritorious service whereas the list provided by the applicant's son, Mr Mark Miller indicates that WO2 Miller was recommended and was awarded the Bronze Star with 'V' Device which is for valour.*

*No formal record exists that the US recommendation for WO2 Miller to receive the imperial equivalent to the Bronze Star for Meritorious Service was ever submitted to the relevant Australian authority in compliance with policy for foreign awards at this time. An extract from the AWM Honours and Awards – Cross of Gallantry file records WO2 Miller having received a Bronze Star with V*

---

<sup>27</sup> Ibid.

*device 31 July 1967. This is listed under the heading ‘Section 5 – Awards for which citations are not held at MACV.*

*The recommendation for a Bronze Star as recorded...are that WO2 Miller should be considered for a Bronze Star for meritorious service because he ‘continually exposed himself to hostile fire’. Although the original nomination was for meritorious service, this would appear to align more appropriately with the Bronze Star for valour. The events described ...will be assessed against the conditions for the awarding of a Gallantry and Distinguished Service Decorations...*

*AWM 276 R445-4-34 Part A Honours and Awards – Cross of Gallantry file contains a consolidated list of United States awards to Australian Personnel. As of 01 April 1972 there were over 350 individual awards/nominations. There were 54 Bronze Star with Valour device in these lists.*

*While the policy at the time was that recommendations for a foreign award should be referred to Australian authorities for consideration for an equivalent Australian award, these recommendations did not usually result in an Imperial award. For example, a random audit of 10 individuals who received the Bronze Star Medal with ‘V’ device (fourth highest US military decoration for valour) revealed that nine had received no Imperial Honour or Award and one had received a Mention In Despatches.<sup>28</sup>*

*There is no policy or precedent to indicate that the receiving of a foreign honour or award will automatically result in the consideration of or the awarding of an Imperial Honour or Award. In the case of the Vietnam conflict there were in excess of 840 individual nominations for foreign awards to Australian Forces.*

*WO2 Miller’s performance of duty was witnessed by his chain of command at the time and recognised by the awarding of the Bronze Star Medal. The details supplied in the ‘Recommendation for Award’ series of messages conveys the impression he was professionally competent, demonstrated initiative and was well regarded by his colleagues. The only specific example of his service in the recommendation is for his actions on the 7 September 1965:*

*He continually exposed himself to hostile fire in order to advise his counterparts in employment of weapons and troops and was instrumental in keeping the units of the battalion in position when it appeared that they might be overrun.*

*Gallantry is not defined in the Regulations and dictionary definitions such as; dashing courage or heroic bravery do not provide an operational construct that is*

---

<sup>28</sup> This is inconsistent with the Tribunal’s own research, shared with the parties, which showed that of a sample of 32 Bronze Star with V device recipients the Tribunal reviewed, 28 (87.5%) received an equivalent Imperial or Australian award. The Tribunal also notes that these awards varied significantly ranging from: a Military Cross; the Distinguished Conduct Medal (7); the Military Medal (6); being Mentioned in Despatches (13); and in 1998 a Commendation for Distinguished Service. The Tribunal research is broadly consistent with the evidence tendered by Major M in 2017 where he stated that ‘... 27 members of AATTV who were awarded the US Bronze Star for Valour were awarded medals from the Distinguished Conduct Medal (DCM) to Mentioned in Despatches (MID). Major M and the Department of Defence [2017] DHAAT 001, (10 January 2017). See also lists of Imperial and Vietnamese awards set out in *Gallant and Distinguished Service Vietnam 1962-1973*, I.L. Barnes, 1974, and lists of Imperial awards and numbers of Vietnamese awards listed in *The Team: Australian Army Advisers in Vietnam 1962-1972*, I. McNeill, 1984.

*measurable in the context of the Australian Honours and Awards system and in action. The Defence Honours and Awards Appeals Tribunal (the Tribunal) have adopted in a number of reviews (See DHAAT Reviews: 08 (2022), 09 (2022), 15 (2022), 20 (2024)) the following definition:*

*The Tribunal 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 each action, and depending on many factors, including the level of threat, the person’s training, role and responsibility, the risk to the individual and/or the group, and the consequences of undertaking, or not undertaking, the particular act.*

*The Tribunal 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.*

*WO2 Miller performed his duties across ‘numerous ground operations...and often times exposed himself to hostile fire’. Unfortunately, the only specific detail of his actions is the description noted above. Following the guidance of the Gallantry Regulations and the Tribunal definition of gallantry, can WO2 Miller’s actions in ‘continually expos[ing] himself to hostile fire in order to advise his counterparts in employment of weapons and troops’ be considered an act of gallantry?*

*The limited and non-specific nature of the description fails to describe how WO2 Miller was exposed to more danger than the rest of the patrol; did more than what was expected of someone of his rank, role or responsibilities; or if he was the only one who managed to perform his duties in hazardous circumstances. WO2 Miller’s actions in performing his duties under fire, given his training, experience and role, could be considered brave and professional but not necessarily gallant. Many, if not all of WO2 Miller’s colleagues in the AATTV performed similar roles and conducted themselves in a similarly exemplary manner, but very few were considered to be gallant.*

*On the basis of the material presented and available, Defence finds WO2 Miller’s actions do not meet the threshold for a Gallantry Decoration.*

*Defence considers that the first step in determining whether an individual’s service is distinguished is to define what that service was. Defence 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. Any assessment of performance will relate to the entirety of the period involved.*

*Defence further considered that for service to be ‘distinguished’, the individual in that role or appointment would have successfully discharged duties that were additional or superior to those normally pertaining to the individual’s rank and employment. For distinguished performance of duties, an individual must usually be in a position where duties are clearly defined and performance of those duties*

*must be demonstrably superior to others with similar employment, responsibility and rank and the performance must have been superior for the duration of the period under consideration. The individual's performance of duty should involve actions that demonstrably set the individual apart from his or her colleagues who were doing what they were trained to do or expected to do as part of a role, rank or responsibility.*

*The description of his service in the recommendation only mentions leadership in relation to WO2 Miller activities once and only in very general terms. Predominantly his service is described as being in an advisory role with no specific details of leadership, therefore, his actions cannot be assessed against the Distinguished Service Cross or Distinguished Service Medal. There are no specific examples of when he demonstrated actions that would be considered over and above what was expected of a Warrant Officer of his experience and training in an AATTV role.*

*In the battle on the 7 September, while exposed to hostile fire, he advised on employment of weapons and troops and was 'instrumental' in keeping the units of the battalion in position. He was performing the duties he was trained to do albeit under difficult circumstances. Defence does not believe his actions meet the threshold for a Commendation for Distinguished Service. Defence notes that the unit was recognised for its meritorious service with a unit citation which is worn by individuals and provides recognition for their service.*

*On the basis of the material presented and available, Defence finds WO2 Miller's actions do not meet the threshold for a Distinguished Service Decoration.<sup>29</sup>*

### **Mr Miller's comments on the Defence Report**

32. On 8 April 2025, Mr Miller was provided with a copy of the Defence Report to the Tribunal and was invited to comment. Mr Miller provided his response by email on 14 and 18 April 2025.<sup>30</sup>

33. In his response Mr Miller said:

*Gallantry is bravery shown by someone who is in danger. For example, when fighting in a war. This is the dictionary definition.*

*WO2 Miller*

*"Continually exposes himself to hostile fire in order to advise his counterparts in employment of weapons and troops."*

*Now when you read the definition of gallantry then read what WO2 Miller did how can you say it was not gallantry. I then read about the limited and non-*

---

<sup>29</sup> Defence Research Report and merit assessment dated 13 September 2024.

<sup>30</sup> Letter/emails, Mr Miller to Tribunal dated 14 and 18 April 2025.

*specific nature of the description and how it fails to describe how WO2 Miller was exposed to more danger than the rest of the patrol, or if he did more than what was expected of someone of his role, rank or responsibility. Or if he was the only one performing this whilst under fire.*

*In my humble opinion, the fact that WO2 Miller was awarded America's fourth highest award for valour and recommended for the Australian equivalent by four officers for his actions should be enough. Additionally, if you know anything about the ARVN forces, they were known to run rather than fight. WO2 Miller called them "roadrunners" due to the speed they would run away. So, do you really think any of them exposed themselves like WO2 Miller did? If WO2 Miller was fighting with an Australian force you might expect some of the Australians to act like WO2 Miller, but he was the only Australian there. So, WO2 Miller continually risked his safety to ensure the ARVN kept fighting and did not run so WO2 Miller would not turn around to find half of them gone. Can you imagine having that on your mind while trying to stay alive and keep the men fighting. This level of bravery cannot be taught, it was a rare commodity that WO2 Miller carried and one that should be recognised by his own people. You talk about WO2 Miller's training, experience and role. That role was to advise, yet here he was leading, fighting and directing troops and fire. If not for WO2 Miller being there with his training and experience against a numerically superior force, let's not forget that, to direct men and fire who knows what the outcome might have been.*

*As I have said WO2 Miller was a soldier who cared more about his men whether they were Australian or Vietnamese than he did about himself. I don't care where you train you cannot teach that. To see you use the information I found or the parts that suited you not to award WO2 Miller the award for gallantry leaves me disheartened to say the least. The information I found in America is all we have in relation to this matter, it must be taken on face value and not changed to suit a narrative. Also think about being the only Australian there not knowing who you can truly trust in a firefight. I am fighting your decision not just for my father who we are so proud of, but all AATTV members who should have been recognised for what they did and the bravery they have shown under the harshest of conditions. Remember them and how they were deployed, then you might understand the men they were, and why they were The Australian Army Training Team Vietnam.<sup>31</sup>*

34. On 18 April 2025, Mr Miller provided the Tribunal with further comments on the Defence Report, in particular regarding the eligibility criteria for the Star of Gallantry, and said:

*He continually exposed himself to hostile fire in order to advise his counterparts in employment of weapons and troops and was instrumental in keeping the units*

---

<sup>31</sup> Letter/emails, Mr Miller to Tribunal dated 14 and 18 April 2025.

*of the battalion in position when it appeared that they might be overrun. WO2 Miller was slightly wounded during this action but stayed on duty.*

*I noticed in section 14.D the outcome - Gallantry decorations, that you didn't write the whole paragraph you stopped at troops, as I did. When in fact WO2 Miller was instrumental in keeping the units of the Battalion in position when it appeared that they might be overrun. If you read the whole paragraph it does sound like they were in great peril. So, to be continually exposing himself took great heroism and bravery. Also, when you read WO2 Miller was instrumental in keeping the units of the battalion in position when it appeared that they might be overrun. It does sound like WO2 Miller was the only one doing this.<sup>32</sup>*

### **At the hearing**

35. Two hearings were required, the first of which occurred on 13 October 2025 when it became apparent during the hearing that Mr Miller did not have available a copy of the Tribunal review documents required for reference at the hearing.

36. Prior to the first hearing being adjourned the Tribunal sought to clarify with Defence issues concerning 'double medalling'. There was a subsequent Request for Information concerning that issue. Defence did not identify any policy material establishing that two medals cannot be awarded for the same event when one medal is conferred by a foreign nation. Defence informed the Tribunal that:

*Current Defence policy allows members to accept and wear both a foreign award and an honour from the Australian honours and awards system, for the same meritorious, gallant or distinguished service. However, bestowing foreign recognition or awards in itself provides no basis for an Australian award. There are no provisions for Australian awards to be made solely on the basis of 'equivalency', although any evidence relied on by a foreign government and made available to Australia could inform Australian Consideration.*

37. Defence also clarified the policy timeline relevant to the acceptance and wearing of foreign awards in connection with service associated with Defence Policy in Vietnam and in summary said:

*[a] brief timeline setting out policy regarding the acceptance and wearing of US Awards in Vietnam:*

*Until 1989 the British Regulations relating to the acceptance and wearing of foreign awards were followed. In certain circumstances Australian citizens could receive honours awarded by foreign governments in recognition of*

---

<sup>32</sup> Letter/emails, Mr Miller to Tribunal dated 14 and 18 April 2025.

*services render to those governments. However the individual needed the Sovereign's permission to accept and wear the award.*

*During the Vietnam War, Australian personnel were subject to these regulations, although documents identify that there may have been some informal relaxing of the approval to accept an award to save embarrassment, but this did not extend fully to the approval to wear a foreign award.*

*The matter of accepting and wearing was considered on a number of successive governments of the day following the end of the war in Vietnam.*

*New Australian guidelines were issued in the Commonwealth of Australia Gazette No S48 of 8 February 1989 but did not extend to foreign awards bestowed during the Vietnam War. Paragraph 4 provided for the permission to accept and wear foreign awards for:*

- *Conspicuous bravery in saving or attempting to save life;*
- *Extraordinary service to humanity at large;*
- *Outstanding service to the country wishing to confer the honour and award; or*
- *Service in warlike or hazardous situations.*

*The Report of the Committee of Inquiry into Defence and Defence Related Awards in March 1994 (pg 71) states 'that no special provisions were made in the Imperial Regulations on the accepting and wearing of foreign awards to cover Australian Troops in Vietnam'. At page 97 of the Inquiry report, the Committee recommends that in light of the introduction of the Australian Guidelines introduced in 1989, the Government may wish to re-examine foreign awards, particularly those related to service in Vietnam.*

*In September 1995, following this recommendation, the Government announced that the Minister for Administrative Services had extended the approval to accept and wear foreign awards to those who served in Vietnam.<sup>33</sup>*

38. The Tribunal drew Mr Miller's attention to the evidence in the Defence Report concerning the original nomination which somewhat curiously was for a Bronze Star for Meritorious Service rather than for a Bronze Star with Valour. Mr Miller in response said that the citation expressly refers to Warrant Officer Miller's actions on 7 September 1965 and considered that the award of the Bronze Star Medal for Valour was the appropriate form of recognition.

---

<sup>33</sup> Government response to CIDA report, part 2, approved by Minister for Administrative Services, Mr Frank Walker, Australia to recognise US Military awards in Vietnam-Media release 23 August 1995.

39. The available material in the Defence Report indicates that eligibility for a Meritorious Service award requires a minimum of one year in the relevant appointment.<sup>34</sup> As Warrant Officer Miller did not serve in Vietnam for a full year the nomination did not meet the eligibility criteria. There is no such requirement for the Bronze Star for Valour, and this might possibly explain why in those circumstances Warrant Officer Miller was unable to receive a Bronze Star Medal for Meritorious Service. That said there is no conclusive evidence either way on this issue. The evidence further indicates that awards for meritorious service required approval by the United States Department of the Army whereas the Bronze Star Medal for Valour required approval by Military Assistance Command Vietnam (MACV).

40. The Tribunal had both Defence and Mr Miller confirm that no documentary evidence was available to explain the circumstances by which the recommendation for a Bronze Star Medal for Meritorious Service was changed to a Bronze Star with Valour.

41. At the second hearing, conducted on 19 November 2025, Mr Miller confirmed that he was seeking a Star of Gallantry as the Australian equivalent of the Bronze Star for Valour for his father. Defence submitted that the equivalent imperial award was the Military Medal. The Tribunal noted, however, a range of imperial awards existed that could be awarded for service generally consistent with that recognised by the Bronze Star, encompassing both meritorious service (such as distinguished and conspicuous service awards) and valour (or gallantry awards).

42. Defence was also asked to provide further information concerning the audit referred to in its report, specifically in relation to how many recipients of the Bronze Star had also received an imperial award. While Defence was initially unable to provide this information, it subsequently conducted a further audit following the hearing and produced the results in a response to the Tribunal's Request for Information. The additional evidence Defence provided broadly aligned with the figures cited in the original audit.

43. The further evidence from Defence indicated that, of a random sample of 10 recipients of the Bronze Star Medal for Valour, three also received an imperial award. In the absence of the underlying citations, it was not possible to determine if they were for the same events. Defence further informed the Tribunal that of all members of AATTV (approximately 989 personnel), 64 individuals were awarded a Bronze Star for Valour of whom six also received an imperial award. This response also showed that 61 individuals received a Bronze Star for Meritorious Service, of whom four also received an imperial award. The Tribunal noted that these figures are inconsistent with those from its own research and those are set out in other published sources (see footnote 28).

---

<sup>34</sup> Letter Lieutenant Julian J. Ewell, USA Commanding Headquarters II Field Force Vietnam to Major General R. A. Hay MBE, Commander Australian Force Vietnam, dated 2 July 1969.

44. The Tribunal asked Defence whether it accepted that Warrant Officer Miller deployed to Vietnam as a substantive Corporal acting Warrant Officer Class Two and in reply Defence confirmed that Warrant Officer Miller's service record was accurate.

45. Defence informed the Tribunal that it considered the deployment of substantive Corporals acting as temporary Warrant Officers to have been relatively common within the AATTV and undertook to conduct further research into the experience and training of other Warrant Officers in the AATTV.

46. Warrant Officer Miller's service records indicate he was qualified (that is, he had attended training courses Subjects A, B and C and had passed exams) for the rank of Sergeant. However, at the time of his deployment to Vietnam he had not attended any training courses nor passed any examinations for the rank of Warrant Officer.

47. Defence subsequently provided additional evidence after the hearing indicating that a number of Warrant Officers serving with the AATTV were substantive Sergeants acting as temporary Warrant Officers when they were in the AATTV. Defence also produced further evidence comprising an updated application from Lieutenant Colonel Commanding Officer (CO) AATTV (undated) recommending that the then substantive Sergeant Miller be credited with Subjects A and B for promotion to the rank of Warrant Officer Class Two. The CO stated that Warrant Officer Miller had *served as member of Bn advisor team for first 5 months and is currently serving as a Regional and Popular Force advisor at District level, Well thought of by US team Captains. Recommend.*

48. Further submissions from Defence stated:

*The AATTV was composed of highly experienced officers and senior non-commissioned officers. To ensure parity with allied forces and Vietnamese counterparts, many senior non-commissioned officers were granted the temporary rank of Warrant Officer Class Two for the duration of their advisory role. Historian, Mr Ian McNeill notes that temporary rank was a common practice within the team to provide the authority necessary for independent operations and liaison duties.<sup>35</sup>*

### **Tribunal approach**

49. The Tribunal is required to review decisions 'on the merits'. This requires an examination of the merits of the matter in dispute rather than the lawfulness of the decision under review.<sup>36</sup> The merits review revolves around the evidence and accordingly, the Tribunal conducts an independent review, with values, expertise, methods and procedures of its own, and not those of the decision-maker.

---

<sup>35</sup> Letter, *Defence to the Tribunal, Request for Further Information – Warrant Officer Class Two Eric Francis Miller (Dec)*, 2 November 2025.

<sup>36</sup> *Council of Australian Tribunals Practice Manual* dated 7 April 2006 p.1.3.1.2.

50. The facts, law and policy aspects of the decision are all considered afresh and a new decision made.<sup>37</sup> The Tribunal reviews the decision, and not the reasons for the decision. In doing so, there is no legal onus of proof, and there is no presumption that the decision was correct.<sup>38</sup> The Tribunal is bound to make what it regards as the 'correct or preferable' decision and must reach a decision that is legally and factually correct.

51. In seeking to meet the above obligations, the Tribunal's consideration on the merits of this matter was necessarily strictly limited to the evidence available to it. As will soon become evident, the paucity of supporting or corroborative evidence of the events in question became a central factor in the Tribunal's deliberations. While Warrant Officer Miller's battle injury was noted in monthly reports, the Tribunal was unable to locate any other information relating to his actions on 7 September 1965, or indeed any other relevant information that might support the application, such as an End of Tour performance appraisal.

52. That Warrant Officer Miller was ultimately awarded a Bronze Star for Valour for his actions on 7 September 1965 is not in dispute. Defence confirmed in its submission that this decoration was awarded, and it did not contend otherwise following a request for information sent by the Tribunal. Defence apparently relied on a listing identified in the archives of the Australian War Memorial. Nor was it disputed that a citation for a Bronze Star for Meritorious Service was forwarded to Headquarters Australian Forces in Vietnam (HQAFV) for consideration. However, there is no record of this citation having been received by, or processed through, the Australian honours and awards system.

53. Notwithstanding that the only relevant document available to the Tribunal appeared, at face value, to have been drafted for a Bronze Star for Meritorious Service (which could be awarded for service similar to that recognised by a distinguished service decoration),<sup>39</sup> the Tribunal proceeded to consider Warrant Officer Miller's conduct against both the Australian Gallantry and Distinguished Service decorations. This is partly because the nomination describes actions and/or outcomes that could readily be interpreted as being either gallant or distinguished, partly because this mirrors the approach taken by Defence, and partly because the applicant ultimately sought the awarding of a Gallantry decoration. In light of these circumstances, the Tribunal considered that it was simply not sensible to remain silent on this aspect of the application.

---

<sup>37</sup> Pearson, Linda, "Merit Review Tribunals", in Creyke, Robin and' McMillan, John, *Administrative Law - the Essentials*, AIAL 2002, p. 68

<sup>38</sup> *McDonald v Director-General of Social Security* (1984) 1 FCR 354.

<sup>39</sup> In practice a range of Imperial awards, including Officer of the Orders of the British Empire (OBEs), Members of the Order of the British Empire (MBEs), Distinguished Service Medals (DSMs), Distinguished Conduct Medals (DCMs), Military Medals (MMs) and Mentioned in Dispatches (MIDs) appeared to have been issued to recipients of Bronze Stars for Meritorious Service, although—critically—the lack of documentation currently available to the Tribunal renders it impossible to prove that the Imperial decorations were awarded for the same purpose or event as the Bronze Star.

## Gallantry

54. While the Tribunal considered that the nomination as drafted for a Bronze Star for Meritorious Service and forwarded for Australian consideration was the nomination to be assessed for the purposes of a merits review, it also considered that Defence had assessed the application against the Gallantry and Distinguished Service suites of honours.<sup>40</sup>

55. The Tribunal broadly agreed with the thrust of the preliminary observations by Defence, particularly in relation to the lack of definition of the term *gallantry* and the fact that previous DHAAT reviews, and Defence itself, have relied on the view that:

*... what amounts to an 'act of gallantry', necessarily varies according to the individual circumstances of each action, and depending on many factors, including the level of threat, the person's training, role and responsibility, the risk to the individual and/or the group, and the consequences of undertaking, or not undertaking, the particular act ...*

and 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.*

## Eligibility Criteria for Gallantry Decorations

56. The eligibility criteria for the Gallantry Decorations are set out in Regulation 3 of the Gallantry Decorations Regulations:

- (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.<sup>41</sup>*

57. On 17 October 1996, an amendment was made to the Gallantry Decorations Regulations with the insertion of a new regulation 3A which provides:

---

<sup>40</sup> Letter/email Defence to Mr Mark Miller dated 16 September 2025 in response to his application to Defence dated 12 August 2022.

<sup>41</sup> *Commonwealth of Australia Gazette* S25 of 4 February 1991, *Letters Patent for Star of Gallantry, Medal for Gallantry and the Commendation for Gallantry* dated 15 January 1991.

*3A. A decoration referred to in regulation 3 may be awarded for an act of a kind mentioned in relation to the particular decoration, although the act did not occur in action, if it occurred in circumstances similar to armed combat or actual operations and those concerned were deployed under military command.*<sup>42</sup>

58. It was clear that Warrant Officer Miller's relevant actions were "in action". Accordingly, if Warrant Officer Miller's conduct is to be considered gallant it would be necessary for the Tribunal to conclude that the conduct was an act of gallantry in action and worthy of recognition, or alternatively that it was an act of gallantry in hazardous circumstances or an act of great heroism or conspicuous gallantry in action in circumstances of great peril.

59. The critical question for the Tribunal was whether there was sufficient factual material available to the Tribunal for a conclusion that Warrant Officer Miller's conduct was an act of gallantry in action and worthy of recognition, or alternatively that it was an act of gallantry in hazardous circumstances or an act of great heroism or conspicuous gallantry in action in circumstances of great peril.

60. The Tribunal found that each of the matters outlined above are relevant matters in assessing whether Warrant Officer Miller's conduct was gallant. In this regard it refers to previous decisions in *Hanuszewicz and the Department of Defence re: Cameron* [2019] DHAAT (confirmed and adopted in *Barnett and the Department of Defence re: Sheean* [2019] DHAAT 09 and *Hulse and the Department of Defence re: Jensen* [2020] DHAAT 15) at which time the Tribunal carefully considered the meaning attributable to the word 'gallantry'. Specifically:

*The Tribunal 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 each action, and depending on many factors, including the level of threat, the person's training, role and responsibility, the risk to the individual and/or the group, and the consequences of undertaking, or not undertaking, the particular act. The Tribunal 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.*

---

<sup>42</sup> Commonwealth of Australia Gazette S420 of 6 November 1996, Amendment to Letters Patent for Star of Gallantry, Medal for Gallantry and the Commendation for Gallantry dated 17 October 1996.

## Tribunal analysis

61. Defence submitted that Warrant Officer Miller's actions of continually exposing himself to hostile fire in order to advise his counterparts in employment of weapons and troops could be considered brave but not necessarily gallant. It said that Warrant Officer Miller's colleagues in the AATTV performed similar roles and conducted themselves in the same manner, but relatively few were considered to be gallant.<sup>43</sup> Defence considered that Warrant Officer Miller's actions did not meet the threshold for a gallantry decoration.

62. Mr Miller said that his father continually risked his safety to ensure the ARVN kept fighting. He said that the citation referred to Warrant Officer Miller being instrumental in keeping the units of the battalion in position when it appeared they might be overrun.

63. While the Tribunal necessarily accepted that the description of Warrant Officer Miller's conduct is evidentially limited, it considered that Defence should have approached its task by considering variously the level of threat, Warrant Officer Miller's training, role and responsibility, and the risk to the individual and/or the group, including the consequences of undertaking, or not undertaking, the particular act. Had Defence adopted this process it would have been readily apparent that:

- a. the threat to the battalion was significant;
- b. the battalion was in imminent danger of being overrun;
- c. the consequences of being overrun would likely have been catastrophic with potentially significant loss of life;
- d. in trying to avoid a catastrophic outcome, Warrant Officer Miller ran between positions continually exposing himself to hostile fire; and
- e. the citation is not confined to a single operation; rather, it refers to Warrant Officer Miller's conduct across numerous ground operations, during which he repeatedly exposed himself to hostile fire.

64. The Tribunal considered that Warrant Officer Miller was likely far more exposed to risk than the majority of the ARVN battalion because he *continually exposed himself to hostile fire in order to advise his counterparts in employment of weapons and troops*.

65. Notwithstanding the number of times that Warrant Officer Miller may have deliberately (or inadvertently) exposed himself to enemy fire, the Tribunal also acknowledged that the role Warrant Officer Miller undertook throughout these events, in which he purportedly held the unit together and prevented it from being overrun, is not only impressive in its own right but is entirely aligned with the concept of gallantry,

---

<sup>43</sup> Letter Defence to Tribunal-Defence report on Warrant Officer Class Two Eric Miller dated 3 March 2025.

especially given his status as a junior Sergeant performing the role of a Warrant Officer.<sup>44</sup>

66. Against the accepted benchmark that *what amounts to an ‘act of gallantry’, necessarily varies according to the individual circumstances of each action, and depending on many factors, including the **level of threat**, the person’s **training, role and responsibility**, the **risk** to the individual and/or the group, and the **consequences** of undertaking, or not undertaking, the particular act*, the Tribunal accepted that Warrant Officer Miller’s actions would, in almost any other circumstance, map neatly across to these bolded ‘elements’.

67. However, although the Tribunal was broadly positively disposed towards the applicant’s arguments, it was also constrained by the paucity of corroborating evidence, either eyewitness reports or in the form of other documentation. This situation was made more difficult by the fact that the author of the nomination, despite being asked, was unable to recall any relevant detail as to why he had written the nomination in the first instance. While these circumstances can be at least partially explained by the fact that Warrant Officer Miller at times served as one of a relatively small number of Australians and Americans in a South Vietnamese force, the unusual absence of supporting documentation, even including routinely generated documents such as End of Tour Performance Reports, has largely constrained the Tribunal’s ability to consider Warrant Officer Miller’s performance in action in more detail.

68. The Tribunal in its deliberations took the view that gallantry decorations require at least some reasonable level of supporting evidence. Notwithstanding that the Tribunal was broadly sympathetic to the thrust of several of the arguments advanced by the applicant, including the fact that the limited narrative hinted at gallantry, it considered that there was simply not enough evidence to support a recommendation for gallantry. Merit-based assessments require substantiated facts, and the lack of supporting evidence meant that as things currently stood, the Tribunal was unable to make any recommendation in support the award of a Gallantry Decoration.

69. Although the Tribunal was frustrated by the lack of supporting material, it also noted that, in the event that corroborative evidence was later found, it would be possible for the applicant to make a further application to Defence and, if that were refused, a further application for review by the Tribunal.

### **Distinguished service**

70. The Tribunal then turned to consider whether to recommend Warrant Officer Miller for a Distinguished Service Decoration.

---

<sup>44</sup> On 7 September 1965, Mr Miller was a substantive Sergeant with just 10 weeks seniority.

## Eligibility Criteria for Distinguished Service Decorations

71. The Distinguished Service Decorations, being the Distinguished Service Cross, the Distinguished Service Medal and the Commendation for Distinguished Service, were established by Letters Patent on 15 January 1991 in the Commonwealth of Australia Gazette No S25 dated 4 February 1991 for the purpose of:

*... according recognition to members of the Defence Force and certain other persons for distinguished command and leadership in action or distinguished leadership in action or distinguished performance of their duties in warlike operations.*

72. Award of the Distinguished Service Decorations is governed by Regulations set out in a Schedule to the Letters Patent.

73. The words '*in action*', in the clause quoted above, were removed by the Commonwealth of Australia Gazette No S18 Amendment of Distinguished Service Decorations, dated 22 February 2012. Conditions for the award of the Decorations are set out in the amended Regulation 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 may be awarded for distinguished performance of duties in warlike operations.<sup>45</sup>*

74. The US nomination as drafted was for a Bronze Star for Meritorious Service, which could be awarded to recognise service similar to that relating to a distinguished service decoration.<sup>46</sup> While Mr Miller correctly identified that the nomination originating from 1<sup>st</sup> LT Ragsdale (51<sup>st</sup> Regiment) referred to then Warrant Officer Miller's actions on 7 September 1965, additional commentary included in the nomination by Lieutenant Colonel Coady (Armour Senior Advisor Quang Nam Special

---

<sup>45</sup> Commonwealth of Australia Gazette S25 of 4 February 1991, Letters Patent for Distinguished Service Cross, Distinguished Service Medal and the Commendation for Distinguished Service dated 15 January 1991.

<sup>46</sup> In practice a range of Imperial awards, including Officer of the Orders of the British Empire (OBEs), Members of the Order of the British Empire (MBEs), Distinguished Service Medals (DSMs), Distinguished Conduct Medals (DCMs), Military Medals (MMs) and Mentioned in Dispatches (MIDs) appeared to have been issued to recipients of Bronze Stars for Meritorious Service, although—critically—the lack of documentation currently available to the Tribunal renders it impossible to prove that the Imperial decorations were awarded for the same purpose or event as the Bronze Star.

Sector HQ) addressed Warrant Officer Miller's broader professional competence as a Regional Force / Popular Force advisor.

### **Defence report**

75. Defence addressed whether Warrant Officer Miller should be recommended for a Distinguished Service Decoration in its Research Report.<sup>47</sup> Broadly Defence submitted that:

- a. ... *'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.*
- b. *Any assessment will relate to the entirety of the period involved.*
- c. ... *for service to be distinguished, the individual in that role or appointment would have successfully discharged duties that were additional or superior to those normally pertaining to the individual's rank and employment.*
- d. *Duties must be demonstrably superior to others with similar employment, responsibility and rank.*
- e. .... *the performance must have been for the duration of the period under consideration.*
- f. *The individual's performance of duty should involve actions that demonstrably set the individual apart from his or colleagues who were doing what they were trained to do.*<sup>48</sup>

76. Defence submitted that in the battle on 7 September 1965 Warrant Officer Miller was performing duties he was trained to do albeit under difficult circumstances.<sup>49</sup>

### **Tribunal analysis**

77. The factual material that was available to the Tribunal concerning Warrant Officer Miller's service in Vietnam was set out in the body of the decision and it is unnecessary to repeat them.

78. Having set aside the issue of gallantry, the question before the Tribunal was whether Warrant Officer Miller's actions, as set out above, satisfied the eligibility criteria for a Distinguished Service Decoration. The Tribunal took it as self-evident, and Defence has agreed, that Warrant Officer Miller carried out his duties in *warlike operations*. In assessing Warrant Officer Miller's actions against the criteria for a

---

<sup>47</sup> Defence Research Report and merit assessment dated 13 September 2024.

<sup>48</sup> Defence Research Report and merit assessment dated 13 September 2024.

<sup>49</sup> Defence Research Report and merit assessment dated 13 September 2024.

Distinguished Service Decoration, the Defence position was that Warrant Officer Miller was doing what he was trained and expected to do and that his actions did not meet the threshold for a Distinguished Service Decoration.

79. In *Conlon and the Department of Defence* [2024] DHAAT 1 (11 April 2024), the Tribunal developed guidelines around the concepts of distinguished service, and particularly in relation to the phrase *duties or responsibilities which were additional or superior to those normally pertaining to their rank, appointment, employment or position* which had been variously used in previous decisions. The Tribunal's view of distinguished service as set out in that case was that:

*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 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.*

80. In considering whether Warrant Officer Miller should be recommended for a Distinguished Service decoration, the Tribunal tested the available evidence against the *Conlon* framework. The following paragraphs document the Tribunal's consideration against each of the framework elements in order of relevance.

81. **In relation to the *distinguished service framework* subpara e. i) (that regard be had for, inter alia, experience and training.)**

- a. Warrant Officer Miller had previously served during the Malayan Emergency at junior ranks (Private and Corporal), before deploying to South Vietnam as a substantive Corporal. He was promoted to substantive Sergeant on 1 July 1965 after coming into his AATTV role, 10 weeks prior to the events of 7 September 1965;
- b. Warrant Officer Miller did not conform to the conventional profile of a combat adviser serving with the AATTV, this being that the *AATTV was composed of highly experienced officers and senior non-commissioned officers*. At the time of his service in Vietnam, substantive Corporal Miller was 30 years old and had served in the Malayan Emergency at a junior rank. At the time he deployed to Vietnam at 30 years old, with, at most, nine years of experience as an infantry soldier, he did not meet the conventional narrative of a combat adviser with the AATTV as portrayed by Defence. As such, he was successfully discharging duties that were additional or superior to those normally pertaining to the individual's rank or employment.
  - 1) The Tribunal took the view that the phrase *highly experienced officers and senior non-commissioned officers* was intended to mean *highly experienced officers and highly experienced senior non-commissioned officers*.
  - 2) As a substantive Corporal for the first six weeks of his billet, Warrant Officer Miller was not a *senior non-commissioned officer*.<sup>50</sup>

---

<sup>50</sup> The term *senior non-commissioned officer* ordinarily refers to soldiers holding the rank of Sergeant or above.

- 3) Further, Warrant Officer Miller's experience (around nine years of Infantry service) and lack of seniority as a Sergeant was arguably well short of what could reasonably have been expected of a **highly experienced senior non-commissioned officer**.

82. **In relation to subpara 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*):

- a. The Tribunal took the view that any analysis of the *duties...reasonably expected of the individual's rank* was intended to refer to substantive rank.
- b. In light of paragraph 81, the Tribunal took it as self-evident that the role performed by Warrant Officer Miller in the AATTV comprised duties that were additional to those reasonably expected of his substantive rank, particularly as a substantive corporal, and to a slightly lesser extent as sergeant.
- c. That these duties were undertaken *successfully* is reflected in the fact that he was nominated for a Bronze Star for Meritorious service after just five months in this role.
- d. That these duties *commanded great respect* is reflected in the nomination text:

*In his role as advisor, Mr Miller continually demonstrated professional competence, a thorough knowledge of his duties and a devotion to his work that drew praise and respect from his Vietnamese counterparts as well as the other members of the advisory team.*

and

*WOII Miller's ability to accomplish any mission given him and to take the initiative and do the job when there was a job to be done in such a manner as to gain the respect and admiration of his Vietnamese, American and Australian associates alike, is a continuing example of his professional competence, leadership, personal integrity and concern for the welfare of the people he was assisting.*

83. **In relation to subpara 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*):

- a) Consistent with paragraph 82, the Tribunal took the view that any analysis of the *duties expected of the individual's rank*...was intended to refer to substantive rank.
- b) With respect to *significantly exceeding those reasonable expectations on a particular occasion*, the Tribunal considered that a junior Sergeant being credited with preventing an infantry battalion with which he was largely unaccustomed from being overrun by a numerically superior adversary at night less than four months after arriving at the battalion should be regarded as quite extraordinary and that on balance it could reasonably be described as being *clearly superior to...the usual performance of others of the same* [substantive] rank. This was considered to be particularly the case when Warrant Officer Miller's relative lack of experience was considered in concert.
- c) Being able to achieve this outcome using combat communications systems from a position of relative safety would be one thing; achieving it by *continually* exposing himself to hostile fire on a number of occasions, in the Tribunal's view, was quite another.
- d) It was also noteworthy that Warrant Officer Miller was given credit for his Warrant Officer promotion courses and, in the absence of any performance appraisals, this likely as not was evidence of superior performance noting that this was recommended by an Australian senior officer and covered his two roles and not just his role with the 51<sup>st</sup> Regiment.
- e) With respect to *meeting the level of reasonable expectation consistently and reliably over an extended period in the most demanding and exceptional circumstances*, the Tribunal took the view that Warrant Officer Miller's exposing himself to hostile fire on numerous other occasions (i.e. quite separately from the events of 7 September 1965) could reasonably be described as performing *consistently and reliably over an extended period in the most demanding and exceptional circumstances*.

84. The Tribunal also took the view that the nomination comments that:

*Mr Miller was instrumental in beginning a small unit training program under the adverse conditions of limited space and time. As a result of this, the level of the unit's training was brought up to the highest level possible and the unit was made more effective during field operations*

constituted evidence that Warrant Officer Miller's in-garrison accomplishments were consistent and reliable over an extended period in the most demanding and exceptional circumstances.

85. **In relation to subpara d.** (*the proper basis of comparison is by reference to reasonable expectations*); this Tribunal used the concept of *reasonable expectations* throughout its analysis.

86. **In relation to subpara f.** (*countervailing factors*); the Tribunal was unaware of any reason why Warrant Officer Miller could not, or should not, be awarded a distinguished service decoration.

87. Because of the above, and notwithstanding the limited documentation available, the Tribunal considered that Warrant Officer Miller's service met the threshold of distinguished service.

88. In the following paragraphs it considered which of the three Distinguished Service Decorations might apply.

### **Distinguished service decorations**

89. Paragraph 73 outlines the criteria for the Distinguished Service Decorations. In short, the Distinguished Service Cross is available for *distinguished command and leadership in action*. The Distinguished Service Medal recognises *distinguished leadership in action* and the Commendation for Distinguished Service recognises *distinguished performance of....duties in warlike operations*.

90. **Distinguished Service Cross.** In assessing whether Warrant Officer Miller might meet the criteria for the Distinguished Service Cross, the Tribunal noted that, apart from the Defence view that Warrant Officer Miller had not met the distinguished service threshold and that there were no 'specific details of leadership' available, Defence made no comments in relation to the issue of *command*. In this regard, the Tribunal took it as self-evident that the role of an advisor was to advise, not to direct, and that Warrant Officer Miller did not form part of formal command arrangements. The prerogative to command remained, at least in theory, with the regiment's Commanding Officer and the internal chain of command.

91. The Tribunal acknowledged that the interpretation of the term *command* extends beyond the legal authority vested in unit and higher command arrangements and embodies tactical command roles/arrangements whereby subordinate commanders direct required effects through the issuing of commands to their subordinates.<sup>51</sup> However, Warrant Officer Miller did not have any subordinates. Nor was it possible, in the absence of any independent and substantiated accounts, to know whether Warrant Officer Miller ever issued instructions that were tantamount to tactical commands—as opposed to recommendations—to the South Vietnamese troops with whom he fought.

---

<sup>51</sup> '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.' See Hulse obo Jensen [2020] DHAAT 15

92. Since the Distinguished Service Cross criterion requires evidence of *distinguished command and leadership*, the Tribunal took the view that Warrant Officer Miller did not meet the eligibility criteria for the Distinguished Service Cross, and discounted it from further consideration.

93. **Distinguished Service Medal.** The Distinguished Service Medal requires demonstration of *distinguished leadership*. As part of its analysis, Defence contended that *the description of his service in the recommendation only mentions leadership in relation to WO2 Miller's activities once and only in very general terms. Predominantly his service is described as being in an advisory role with no specific details of leadership, therefore, his actions cannot be assessed against the Distinguished Service Cross or Distinguished Service Medal. There are no specific examples of when he demonstrated actions that would be considered over and above what was expected of a Warrant Officer of his experience and training in an AATTV role.*<sup>52</sup>

94. Although the Tribunal agreed with the observation that the term *leadership* was mentioned just once in the eight paragraphs of the nomination, previous Tribunal deliberations have looked beyond the written word to determine the extent to which key actions or outcomes were likely the direct result of distinguished leadership. The Tribunal also took the view that, in assessing the calibre of the displayed leadership, expectations ought to have been baselined against those of a junior Sergeant, rather than a *highly experienced* senior non-commissioned officer.

95. Although the Tribunal took the view that it was highly improbable that a junior Sergeant could have prevented the battalion being overrun by a numerically superior adversary at night without displaying leadership of the highest possible calibre, the Tribunal considered that the nomination narrative fell well short of describing how Warrant Officer Miller was *'instrumental'* in the battalion's defence. Again, the lack of evidence confirming necessary context precluded the Tribunal being able to make any recommendations in relation to a Distinguished Service Medal, and like the Distinguished Service Cross, it was removed from further consideration.

96. **Commendation for Distinguished Service.** As part of its analysis, Defence submitted that despite being *'instrumental' in keeping the units of the battalion in position, [Warrant Officer Miller]...was performing the duties he was trained to do albeit under difficult circumstances. Defence does not believe his actions meet the threshold for a Commendation for Distinguished Service.*

97. The Tribunal is bound to make what it regards as the 'correct or preferable' decision that is legally and factually correct. Having established that Warrant Officer Miller's performance throughout his AATTV tour was *distinguished*, and having ruled out the ability to recommend either the Distinguished Service Cross or the Distinguished Service Medal, the Tribunal concluded that, by definition, Warrant Officer Miller may

---

<sup>52</sup> Defence Research Report and merit assessment dated 13 September 2024.

be eligible for consideration of recognition by the Commendation for Distinguished Service.

98. **Finding/s.** Having regard to the totality of the evidence, the Tribunal found that Warrant Officer Miller's service in Vietnam was characterised by courage, commitment and repeated exposure to hostile fire across numerous ground operations. The Tribunal was satisfied that he demonstrated these characteristics on both a single occasion and more broadly across his deployment. Applying the guidelines in *Conlon* and assessing his conduct against the reasonable expectations of his substantive rank, experience and employment, the Tribunal was persuaded that his performance rose to the level of *distinguished service* for the purposes of a Commendation for Distinguished Service.

### **Tribunal Decision**

99. In light of the above the Tribunal decided to recommend that the Minister:
- a. affirm the decision to not recommend Warrant Officer Miller for an Australian Gallantry Decoration and
  - b. set aside the decision to not recommend Warrant Officer Miller for a Distinguished Service Decoration and substitute it with a new decision to recommend Warrant Officer Miller for the Commendation for Distinguished Service.