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## Retrospective awards to service personnel for gallantry and bravery

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## Introduction

In August 2008 the Government referred 'unresolved concerns regarding individual awards' for the 1966 Battle of Long Tan in Vietnam to the independent Defence Honours and Awards Tribunal.<sup>1</sup> The adequacy of awards for the Long Tan action has been a long-standing issue.

Rather than pursue that specific issue, which is currently being considered by the Defence Honours and Awards Tribunal, this background note outlines the current requirements for the timing of nominations for awards for gallantry, distinguished service and for bravery, and summarises the principles applied in previous approaches to considering retrospective awards for the Vietnam War.

## Current time frames for nominations

In general, current Defence policy is that recommendations for awards should be submitted within six months of the event. The specific policies on the timing of nominations for awards to service personnel are set out in Defence Instructions (General), dealing with personnel matters. The relevant quotations below are taken from the most recently available editions.

## Nominations for Australian gallantry and distinguished service decorations

Australian Gallantry and Distinguished Service decorations and awards for use in active warlike situations are:

- Victoria Cross
- Star of Gallantry
- Medal for Gallantry
- Commendation for Gallantry
- Distinguished Service Cross
- Distinguished Service Medal
- Commendation for Distinguished Service

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1. J Faulkner (Cabinet Secretary, Special Minister of State), A Griffin (Minister for Veterans' Affairs) and M Kelly (Parliamentary Secretary for Defence Support), *Medals for Long Tan veterans: new tribunal to examine other issues*, media release, 27, 2008, 14 August 2008, viewed 11 June 2009, [http://www.smos.gov.au/media/2008/mr\\_272008\\_joint.html](http://www.smos.gov.au/media/2008/mr_272008_joint.html) For a description of the action at Long Tan see Lt Col H Smith MC (Retd), 'No time for fear', *Wartime*, issue 35, 2006, viewed 19 June 2009, <http://www.awm.gov.au/wartime/35/article.asp>

- Nursing Service Cross
- Unit Citation for Gallantry and
- Meritorious Unit Citation.<sup>2</sup>

Defence policy envisages that recommendations for Gallantry and Distinguished Service Decorations be made in a prescribed format ‘as soon as practicable after the end of the six-monthly period(s) specified for each campaign’.<sup>3</sup> These nominations are termed ‘Periodic’. The rationale for the six-monthly cycle is not explained. Defence policy is that ‘Periodic nominations for awards will be the normal way to make recommendations for Gallantry and Distinguished Service awards’.<sup>4</sup> However, there are occasions when this timeframe may be ignored:

Under exceptional circumstances acts of extreme gallantry in action and distinguished service may be recognised by immediate awards.<sup>5</sup>

## **Nominations for the Victoria Cross**

Although there is no provision for the award of an ‘immediate’ Victoria Cross, ‘nominations for this decoration should be passed immediately through the parent Service to the Chief of the Defence Force’...<sup>6</sup>

## **Nominations for Australian bravery decorations**

Australian Bravery Decorations, which recognise acts of bravery by members of the community, including the military, are:

- Cross of Valour
- Star of Courage
- Bravery Medal
- Commendation for Brave Conduct and

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2. Defence Instructions (General), PERS 31–3, *Australian gallantry and distinguished service decorations*, 30 November 1992, (DI (G) PERS 31-3), Paragraph 1 ‘Introduction’.

3. The ‘prescribed format is a two line précis citation, followed by a detailed citation, ‘usually around three-quarters of a page in length’, DI (G) PERS 31–3, Annex E and DI (G) PERS 31–3, Paragraph 16, ‘Periodic awards’.

4. DI (G) PERS 31–3, Paragraph 16, ‘Periodic awards’.

5. DI (G) PERS 31–3, Paragraph 17, ‘Immediate awards’.

6. DI (G) PERS 31–3, Paragraph 21, ‘Victoria Cross’.

- Group Bravery Citation.<sup>7</sup>

A bravery decoration generally covers an act of bravery which ‘does not meet the Gallantry Decorations Regulations as occurring “in action” or circumstances similar to armed combat or actual operations’.<sup>8</sup> Defence policy is that nominations for bravery decorations for acts in ‘normal peacetime circumstances’ and ‘non-warlike operational or peacetime circumstances’ should be submitted as ‘as soon as practicable’ after the act has occurred.<sup>9</sup>

Nominations for bravery decorations in ‘warlike operational circumstances’ should be submitted as part of the six-monthly campaign cycle mentioned above.

## Retrospective awards

The most recently available edition of Department of Defence policy in DI (G) PERS 31 does not address the issue of retrospective awards. Nor does it appear to consider the possibility of any significant departure from the timetables for recommendations of awards.

Nevertheless, personnel who served in Vietnam have received awards retrospectively.

### 1998 End of War List–Vietnam

An End of War List is established after the conclusion of hostilities, and provides for a final allocation of honours, decorations and medals for individual acts of gallantry.<sup>10</sup>

End of War Lists have traditionally been used to ensure that acts of gallantry not recognised at the time of their occurrence are not overlooked when the conflict is over. End of War Lists allowed previously unsuccessful recommendations to be reconsidered and acts of gallantry, which had not received recognition for reasons such as security, to be put forward for consideration.<sup>11</sup> Ideally, the End of War List process should be undertaken within two to three years of the end of the conflict, while witnesses are still easily located and memories are still fresh. End of War Lists were made this way at the end of World War II and after the Korean War cease fire. However, an End of War List for Vietnam was not made until more than two decades after the fall of Saigon.

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7. *Australian bravery decorations*, ‘It’s an honour’ website, viewed 10 June 2009, <http://www.itsanhonour.gov.au/honours/awards/medals/bravery.cfm>

8. Defence Instruction (General), PERS 31–4, *Australian bravery decorations*, 30 April 2002, (DI (G) PERS 31–4), Paragraph 2.

9. DI (G) PERS 31–4, Paragraphs 11–13.

10. R Halverson, ‘Second reading speech: End of war list bill 1991’, House of Representatives *Debates*, 14 February 1991, p. 593.

11. Law and government group, *End of War List Bill 1990 (Private Senator’s Bill)*. Bills digest service, Department of the Parliamentary Library, 18 September 1990.

An End of War List–Vietnam was completed in February 1998.<sup>12</sup> It increased the number of awards made for that conflict and upgraded some already awarded. These changes resulted from examination in 1997 by an inter-departmental committee of awards to service personnel.<sup>13</sup>

... who were recommended for an Imperial honour or award at the time of the conflict by the highest level of Australian command in Vietnam, but whose awards were subsequently downgraded or struck out in Australia.<sup>14</sup>

The factors taken into account when recommending the 81 new or revised awards were:

- contemporary documentary evidence that an award had been recommended by the Australian command in country and
- a decision in Australia had led to the recommended award not being made.

### **1999 Report of the Independent Review Panel of the End of War List–Vietnam**

An Independent Review Panel of the End of War List–Vietnam was established on 31 March 1999 to review the recommendations made for awards to six Vietnam veterans.<sup>15</sup> Although it was outside the panel's terms of reference, submissions to it advanced claims that some service personnel not included in the End of War List–Vietnam should have received gallantry decorations.

The panel commented that, although it was convinced:

... there are those who were disadvantaged because of the imposition of the quota system or by the reluctance of some commanders to submit nominations, any attempt to revisit these circumstances now would simply create more anomalies.<sup>16</sup>

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12. B Scott, 'Answers to questions without notice, End of war list Vietnam: independent review panel report', House of Representatives, *Debates*, 2 September 1999, p. 9814.
  13. N Tanzer, P Phillips, C Mitchell-Taylor, *Report of the independent review panel of the end of war list–Vietnam*, 25 August 1999, p. 4, viewed 19 June 2009, [http://www.defence.gov.au/MEDALS/Content/+060%20Reviews%20and%20Reports/Vietnam\\_Report.pdf](http://www.defence.gov.au/MEDALS/Content/+060%20Reviews%20and%20Reports/Vietnam_Report.pdf)
  14. Terms of reference of the inter-departmental committee on honours and awards, quoted in *Report of the independent review panel of the end of war list–Vietnam*, p. 21.
  15. Report of the independent review panel of the end of war list–Vietnam, p. 6.
  16. '...where large numbers of forces were committed for extended periods, the quality and number of awards were controlled through the application of a quota. The quota prescribed the maximum number of awards that could be made each six months, and was expressed as a ratio of awards against the number of deployed personnel'. *Review of recognition for the battle of Long Tan: March 2008*, p. 15, on the website 'Review of recognition for the battle of Long

The panel added:

To invite comparisons of individual merit now, so long after the actual events is injudicious as well as having the potential of being demeaning to the individuals concerned. Imposing a standard (recommended at every level in Vietnam but struck out or downgraded in Australia) at least provides a finite list and a firm basis for that list... the panel came to the conclusion that no equitable solution could be achieved so long after the events.<sup>17</sup>

The panel agreed with the approach used in the End of War List–Vietnam: any review should depend on the existence of contemporary documentation of an in-country decision which subsequently had been changed in Australia.

## 2008 Review of Recognition for the Battle of Long Tan

In October 2007, the Prime Minister, John Howard, announced that, ‘as a result of continuing representations from the ex-Service community’, the Government would appoint an independent review panel.<sup>18</sup> It would be required to:

... review the treatment of award recommendations stemming from the Battle of Long Tan... to examine the documentary evidence available, consider the nature and context of the battle and the process that followed concerning individual and collective recognition, and seek to arrive at a fair and sustainable response to claims for further recognition.<sup>19</sup>

The panel’s approach differed from that used in the 1998 End of War List–Vietnam, and the subsequent review in 1999. Firstly, under its terms of reference the panel reviewed ‘the process and decisions made for individual awards *within* Australian Force Vietnam’ (emphasis added).<sup>20</sup>

This approach meant that whereas previously reviews had addressed only those recommendations which had been changed by decisions in Australia, the panel examined contemporary in-country changes to individual recommendations.

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Tan and RAAF Ubon: reports’ viewed 11 June 2009,

[http://www.pmc.gov.au/publications/longtan\\_ubon/index.cfm](http://www.pmc.gov.au/publications/longtan_ubon/index.cfm) This arrangement (called the ‘operational scale’) remains applicable to gallantry and distinguished service awards (except the Victoria Cross) in the most recently available edition of DI (G) PERS 31–3.

17. Report of the independent review panel of the end of war list–Vietnam, pp. 21, 34.

18. J Howard (Prime Minister), *Review of recognition for the battle of Long Tan*, media release, 12 October 2007, viewed 19 June 2009, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p?query=Id%3A%22media%2Fpre\\_srel%2FLKKO6%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p?query=Id%3A%22media%2Fpre_srel%2FLKKO6%22)

19. Review of recognition for the battle of Long Tan: March 2008, p. v.

20. Review of recognition for the battle of Long Tan: March 2008, p. 3.

Secondly, the panel indicated a willingness to move beyond documentary evidence by adopting as a principle that any of its decisions to recommend further recognition ‘must be based on official records or *other compelling evidence*’ (emphasis added).<sup>21</sup>

However, having considered non-documentary evidence, the panel concluded that firstly:

... none of the other claims ... were the subject of recommendations initiated by an authorised commander so that a particular award might have resulted. The Panel did not think it appropriate for anyone to draft fresh citations, so long after the fact, on the basis of personal recollections.<sup>22</sup>

Secondly, the panel considered that ‘in the absence of a recommendation initiated by an authorised person at the time, it is not sustainable to consider making a fresh award to anyone’.<sup>23</sup>

The panel recommended revised awards for three servicemen. In relation to possible awards for other individuals the panel stated:

The integrity of the honours system would be threatened if the Panel accepted a claim for recognition without adequate proof that the award was formally recommended. Therefore only claims that had been initiated by a completed form of recommendation (AF-W3121 or otherwise), or compelling evidence that one had existed, would be considered.<sup>24</sup>

This approach led to a recommendation (Recommendation 3), that ‘no action be taken to make a contemporary award for any other participant in the Battle’.<sup>25</sup>

## Defence Honours and Awards Tribunal

In its response to the panel’s report, the Government noted:

... the recommendation and the principles adopted by the Panel which lead to the Panel not pursuing the review of other claims for awards. However, given the concerns that have been raised in connection with recommendation 3, the Government will refer the issue of claims for other participants in the Battle of Long Tan to the independent Defence Honours and Awards Tribunal for review. The tribunal’s decisions will be binding upon the Government.<sup>26</sup>

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21. Review of recognition for the battle of Long Tan: March 2008, p. 4.
  22. Review of recognition for the battle of Long Tan: March 2008, p. 23.
  23. Review of recognition for the battle of Long Tan: March 2008, p. 35.
  24. Review of recognition for the battle of Long Tan: March 2008, p. 17.
  25. Review of recognition for the battle of Long Tan: March 2008, p. vii.
  26. Medals for Long Tan Veterans.



The Tribunal is to examine relevant documentary evidence, and consider the nature and context of the service, in relation to the criteria for Australian and Imperial awards that existed at that time, in order to arrive at a fair and sustainable response to claims for recognition.

...

In making its findings and formulating its recommendations the Tribunal is required to maintain the integrity of the Australian honours system and identify any consequential impact any finding or recommendation may have on that system.<sup>27</sup>

These terms of reference, like those for the Long Tan review panel, focus on ‘documentary evidence, and ... the nature and context’ of the events. Under this formulation the Long Tan panel had considered not only documentary evidence, but also any other ‘compelling evidence’.<sup>28</sup>

The Tribunal’s terms of reference permit it to ‘determine its own procedures, in accordance with the general principles of procedural fairness, when conducting its inquiry’.<sup>29</sup> Unlike the Long Tan review panel, the Tribunal has actively sought submissions on the subject.<sup>30</sup>

## Summary

When examining the possibility of retrospective awards to individuals for gallantry, distinguished service and for bravery for service in the Vietnam War, the approach in the past has been to review only nominations made at the time. That is, if no recommendation for an award had been made at the time of the events, then a retrospective award for that action was not pursued.

Generally, documentary evidence of a recommendation was required if a retrospective award was to be considered. However, the 2008 Long Tan panel indicated that it was prepared to consider ‘compelling evidence’ that a formal, documented recommendation had been made, even if there was now no document.

The Government’s referral of reconsideration of awards for the Battle of Long Tan to the Tribunal, and its undertaking to ‘consider itself bound by the Tribunal’s recommendations on

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27. Australian Government, Defence Honours and Awards Tribunal, *Inquiry into unresolved recognition issues for the battle of Long Tan*, Terms of reference, viewed 18 June 2009, [http://www.defence-honours-tribunal.gov.au/Websites/dhat/Images/documents/Terms\\_of\\_Reference\\_Long\\_Tan.pdf](http://www.defence-honours-tribunal.gov.au/Websites/dhat/Images/documents/Terms_of_Reference_Long_Tan.pdf)

28. Review of recognition for the battle of Long Tan: March 2008, p. 4.

29. Inquiry into unresolved recognition issues for the battle of Long Tan, Terms of reference.

30. Inquiry into unresolved recognition issues for the battle of Long Tan, Terms of reference.

these matters' may provide a clearer set of principles for the consideration of retrospective awards in the future.<sup>31</sup>

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31. Medals for Long Tan Veterans.