Insert name and particulars

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Committee Secretary
Defence Honours and Awards System

Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Dear Secretary

Enclosed is a submission that requests the repeal of the clause contained in Unit Citation Regulations Amendments of 13 July 2020, which sets a time-limit of ”on or after 15 January 1991”.

Forwarded for consideration by the Senate Inquiry.

Yours sincerely

**SUBMISSION FOR THE REPEAL OF THE TIME LIMITING CLAUSE IN THE Regulations governing unit citationS**

**PURPOSE**

This submission requests the repeal of the words “on or after 15 January 1991” contained in the Unit Citation Regulations Amendments of 13 July 2020[[1]](#footnote-1).

**INTRODUCTION**

The Gration Report[[2]](#footnote-2) stated “The Committee recognises that the Australian system of honours and awards is underpinned by values which are held in high regard in our society, and which characterise the way Australians view the world around them. These values include a sense of fairness, equity and compassion, and an egalitarian commitment to acknowledge the quality of service and substance of action without regard to status or class.”

Those values and commitment were not observed when the 2020 amendments to the regulations were drafted. The amendments were made on the advice of Defence Honours and Awards (DHA) and the Defence Honours and Awards Appeals Tribunal (DHAAT) without consultation with the wider veteran community for their inputs. The imposition of the no retrospectivity prior to 15 January 1991 clause is an injustice to veterans of units that displayed extraordinary gallantry or meritorious service previously.

DHA’s and DHAAT’s arguments against retrospectivity are discussed in the following paragraphs.

**Retrospectivity**

The Defence Honours and Awards and Commendations Policy Review of 8 February 2008 recommended that the honours and awards system follow a ‘no retrospectivity’ policy on the grounds of a presumption that “To allow retrospective award, even selectively, will open additional avenues of claim for a range of individuals and interest groups, and result in levels of administrative work far in excess of that currently experienced”[[3]](#footnote-3). It is considered reprehensible, deplorable, and unjust that a unit that displayed extraordinary gallantry in action or meritorious service cannot be honoured because it might increase someone’s workload. If the requirement is satisfied, the citation should be awarded regardless of any presumptions.

In several inquiries DHAAT found that there was no bar to the retrospective award of citations but in the case of the 547 Signals Troop Inquiry a differently constituted Tribunal recommended that a ‘no retrospectivity’ policy be adopted[[4]](#footnote-4).

The ‘no retrospectivity’ policy is discriminatory and gives a distorted impression of Australia’s military history in that units that would normally meet the requirements cannot be so honoured because their deeds occurred in the past.

**Opening the Floodgates**

Defence has long claimed that the ability to make a retrospective award would ‘open a ‘Pandora’s Box’ or ‘open the flood gates’, and lead to never-ending claims for recognition by other units that served before the cutoff date. This, it has been claimed, could ‘damage the integrity of the Australian Honours System.’ We believe that there is enough power invested in the Governor-General, the relevant Minister, DHAAT and DHA to control the ‘floodgates’. It is considered that if the citations were awarded to pre-1991 units that satisfy the requirements, the status of the honour would not be tarnished but raised.

The Letters Patent and Regulations were promulgated in 1991 and the amendment in 2020. In the intervening 29 years when there was an opportunity for applications to be lodged the floodgates were not opened, and there is no evidence that there would be a flood of applications in the future.

**Level Commensurate with the Highest Individual Australian Awards for Gallantry**

DHAAT has declared that the award of the UCG should ‘be considered to be at a level commensurate with the highest individual Australian awards for gallantry. … This would maintain the extremely high standard and status of the award of the UCG as envisaged by the Government in 1987’[[5]](#footnote-5). Over a period of more than 124 years of Australian military history the Victoria Cross has been awarded to 101 Australian servicemen (which includes those awarded for gallantry during the Boer War and in other nation’s forces) without any diminishment of its status. By contrast, over a period of 29 years the UCG has been awarded six times (twice through the chain of command (1 Sqn SASR and SASR-4RAR (CDO))), twice not analysed against the criteria (D Coy 6RAR and HMAS *Yarra)[[6]](#footnote-6)* and twice resulting from DHAAT inquiries (Coral-Balmoral and the RAN Heli Flt VN). As the first two do not involve retrospectivity, this leaves four cases. Of those four cases two appear to have been waved through leaving two cases to be subject to investigation in 29 years. This could not be considered a flood.

**Threat to the Integrity of the Australian Honours System**

One reason given as to why DHA opposes retrospectivity is that the award to too many units poses a ‘threat to the integrity of the Australian Honours System.’The Defence Department has often used the term in its arguments against retrospectivity without any evidence of a threat or explanation of how it would damage the citation’s integrity. This policy is restrictive, discriminative, and could place decision-makers in the unenviable position of having to choose between two equally qualified units. The current criteria are broad and therefore open to possible different interpretation by the different personnel serving in the chain of command at the time. For example in one inquiry DHAAT commented *“In the latter case, it appeared that the benchmark used was the number of missions and engagements, noting that no high level individual gallantry awards were made during the tour.”[[7]](#footnote-7)*

The requirements should include clear, stringent criteria for the award such as that practiced by DHAAT. The Tribunal set out conditions it decided should be met to be eligible for the award of the UCG. If a unit’s performance satisfies the requirement the honour should be awarded. If a citation was approved on clear and unequivocal merit, there would be no damage to its standing if more units were also awarded the citation on merit.

It is considered that the award of a citation to all units that displayed extraordinary gallantry or meritorious service such as that by 7th Bn 1st AIF which performed extraordinary gallantry in action at Lone Pine on 9 August 1915 when four members were awarded the VC, would not tarnish the honour system, but would add to its esteem. The same argument could be put in many other cases of battles such as Pozières, Fromelles, Buna-Gona or Kapyong in which members of the ADF have fought.

DHAAT feared that a multiplication of belated applications for unit citations for actions or service before 1991 over the next decade or more would threaten the integrity of the Australian Honours System[[8]](#footnote-8). As mentioned above the UCG has been awarded at the most four times involving retrospectivity over a period of 29 years. This could not be considered a multiplication of belated applications ‘over a decade or more.’’

To restrict the award of the Nation’s highest unit honours to post-1991 actions give a false impression of displays of extraordinary gallantry by units of the ADF and lowers the esteem of the honour and is a manifest injustice and an insult to previous units that have displayed extraordinary gallantry.

**Operational Context. Application of Contemporary Criteria**

This argument includes the statement ‘The citations were introduced at the beginning of a period in which the operational environment proved to be markedly different from the past.’[[9]](#footnote-9) The operational environment of wars has always been different. That of WW1 was different to that of WW2 which was different to that of Korea which was different to that of Vietnam and so on up to the present. What has changed is the composition of the chain of command and the process of filtering applications for citations. That is irrelevant in cases involving retrospectivity which do not pass up through the chain of command but are passed to DHAAT by the relevant Minister for inquiry and recommendation.

**Defence Intention and Policy**

The Department of Defence has always argued that when the citations were introduced it was not intended that they be awarded retrospectively. So far Defence has not produced any evidence to that effect. If it were so intended such an important clause would have been included in the original Regulations.

Defence also considers the application of contemporary criteria to military activities which occurred almost half a century ago to be inappropriate[[10]](#footnote-10) and that examining the activities of individual units or battles in isolation, as opposed to their role within the context of the wider conflict, may result in unequal recognition. According to the regulations for the UCG the Unit Citation for Gallantry shall be awarded to a unit only for acts of exceptional courage or courageous endurance during the physical involvement of members of the unit of the Defence Force as part of a force engaged in contact with an opposing force[[11]](#footnote-11). The operative words are ‘engaged in contact with an opposing force’. The engagement takes place on the battlefield. It is there that the extraordinary gallantry is performed. What happens on the battlefield has not changed. Soldiers are killed, others wounded, some seriously, both physically and emotionally. The regulations make no mention of ‘contemporary criteria’ or the unit’s ‘role within the context of the wider conflict’.

The one question to be asked, regardless of the wider conflict or role, should be ‘Is what the unit did considered to be extraordinary gallantry in action?’ Extraordinary gallantry is extraordinary gallantry no matter in what conflict or role it occurs. Individual units or battles should be examined in isolation. It is the individual unit’s action that should be the basis of deciding whether the criteria for extraordinary gallantry have been met, not some superimposed context of the wider conflict.

Current recommendations for honours are made through the chain of command which has been in place since 1991. It is acknowledged that the chain of command in force now differs from that which was in operation previously. However, the chain of command does not enter the picture until after the extraordinary gallantry has been displayed. It is the administrative process through which a recommendation is filtered in order to succeed or fail. The command structure in force pre-1991 has been disbanded except for the two most senior components, namely Army and Defence. Consequently, there is no command structure to process retrospective claims. They can only be processed through an inquiry by DHAAT.

**Consistency**

The argument goes on that ‘disappointed applicants might ask the Minister to direct that an inquiry be conducted. The Tribunal might then become the recommending authority to the Minister. The Tribunal may approach its consideration of the unit’s claims in the pre-1991 period in a different manner to that of the military command structure in the post-1991 period’. DHAAT ***is*** a recommending authority because inquiry terms of reference require it to make recommendations and s110VB (2) of the *Defence Act 1903* gives the authority (see below).

In the Coral-Balmoral Report at para 31 it states, ‘The Tribunal considered the Defence guidance to be largely unhelpful and in previous Inquiries, has commented on the lack of policy guidance and the potential damage this may have upon consistency and the integrity of the assessment process.’ At para 37 the Tribunal set out criteria it considered should be normally met to be eligible for the award of the UCG. Such a common criteria for the award could be formulated to satisfy both avenues of consideration.

**General**

Section 110VB of the *Defence Act 1903* gives DHAAT jurisdiction with respect to decisions involving defence honours and defence awards. Unit citations are neither defence honours nor defence awards. Consequently, rejection of a submission for either cannot be reviewed unless the minister directs an inquiry be conducted. The no retrospectivity policy has only been applied in the case of unit citations as other honours and awards are still being awarded retrospectively resukting from DHAAT reviews.

**CONCLUSION**

The Committee of Inquiry into Defence Awards developed ten principles to guide its considerations. The third principal was:

*3. To maintain the inherent fairness and integrity of the Australian system of honours and awards care must be taken that, in recognising service by some, the comparable service of others is not overlooked or degraded.[[12]](#footnote-12)*

This principle has been ignored in the case of unit citations. An anomaly has been created in that some citations have been awarded to units retrospectively but not to others whose comparable service has been overlooked or degraded.

The UCG has been awarded on four occasions to units that displayed extraordinary gallantry in action prior to 15 January 1991 without tarnishing the integrity of the Australian Honours System and there is no evidence that further awards would do the system harm. Veterans consider it unfair, and an injustice, that any unit which displayed extraordinary gallantry in action or meritorious service cannot be honoured with the award of the relevant citation. This restriction displays an attitude of a complete lack of respect to the veterans of those units.

It is almost inconceivable and a great injustice, that units which gave rise to the ANZAC Spirit and set the standard in the ADF for extraordinary gallantry in action, cannot be honoured by being awarded the highest unit honour that the nation can bestow.

If a unit satisfies the requirements the relevant citation should be awarded.

It is requested the regulations be amended to remove any time-related restriction.

Signed

on behalf of ADF veterans

*“It burns with a white rage against societies as a whole, from military leaders and chiefs of state to comfortable civilians in easy chairs, who send rough men out to serve their interests brutally, murderously, and then—when circumstances change and in the exquisite safety and fastidiousness of their living rooms they suddenly find these rough men’s actions repugnant—disown them”.*

Richard Grenier “The Uniforms That Guard Us”

1. Unit Citation Regulations para 2 Reg 3 (Conditions for award of citations). [↑](#footnote-ref-1)
2. Report of the Committee of Inquiry into Defence Awards page 5. [↑](#footnote-ref-2)
3. The Defence Honours and Awards and Commendations Policy Review of 8 February 2008 page 77. [↑](#footnote-ref-3)
4. Report of Inquiry into Recognition for Service with 547 Signal Troop in Vietnam from 1966 to 1971. [↑](#footnote-ref-4)
5. Report of the Inquiry into Unit Recognition for Service at the Battles of Fire Support Bases Coral and Balmoral para 36. [↑](#footnote-ref-5)
6. Report of the Inquiry into Unit Recognition for Service at the Battles of Fire Support Bases Coral and Balmoral para 32. [↑](#footnote-ref-6)
7. Report of the Inquiry into Unit Recognition for Service at the Battles of Fire Support Bases Coral and Balmoral para 33. [↑](#footnote-ref-7)
8. Report of Inquiry into Recognition for Service with 547 Signal Troop in Vietnam from 1966 to 1971 para 75. [↑](#footnote-ref-8)
9. Report of the Inquiry unto Recognition for Service with 547 Signals Troop in Vietnam from 1966 to 1971 para 51. [↑](#footnote-ref-9)
10. Report of the Inquiry into Unit Recognition for Service at the Battles of Fire Support Bases Coral and Balmoral, para 24. [↑](#footnote-ref-10)
11. Unit Citation Regulations Reg 2 (Interpretation). [↑](#footnote-ref-11)
12. Report of the Committee of Inquiry into Defence Awards, page 6. [↑](#footnote-ref-12)