



To Minister for Defence Personnel

For Info Minister for Defence

Subject Advice for Republic of Vietnam Campaign Medal s22

Timing At your convenience

Recommendations

That you:

1. **note** s22 submission has been reviewed and his key points addressed; noted / please discuss
2. **agree** to either:
 - support s22 request to award the Republic of Vietnam Campaign Medal to veterans who served at least 60 but fewer than 181 days in Vietnam; or agreed / not agreed
 - consider proposing a new medal in the Australian Honours and Awards System to recognise Vietnam service; agreed / not agreed
3. **note** each option requires the support of the Minister for Defence and the Prime Minister; noted / please discuss
4. s33(a)(iii) [redacted] noted / please discuss
5. **note** each option presents its own risks and challenges; noted / please discuss
6. **note** it is recommended not to inform s22 of your support for either course of action while the matter is considered by the Government; noted / please discuss
7. s22 [redacted] and s22 [redacted] signed / not signed
8. s22 [redacted] and s22 [redacted] signed / not signed

Minister for Defence Personnel	
Signature.....	Date:...../...../2021

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. On 24 February 2021, s22 [redacted] made representations to the former Minister for Defence Personnel, the Hon Darren Chester MP on behalf of s22 [redacted] about the eligibility criteria of the Republic of Vietnam Campaign Medal (RVCM) s22 [redacted]. Attached to s22 [redacted] correspondence was s22 [redacted] submission dated 1 September 2020, independent legal advice s22 [redacted] obtained from s22 [redacted], letters of support and a list of petitioners who signed his online petition on the [change.org](https://www.change.org) platform.

2. s22 [redacted]

3. The former Minister for Defence Personnel responded to s22 [redacted] on 3 June 2021, stating the submissions s22 [redacted] did not advance any new legal issues or considerations that would allow the Australian Government to amend the existing eligibility criteria for the RVCM s22 [redacted].

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4. On 5 July 2021, s22 appealed to you to reconsider the decision of the former Minister for Defence Personnel not to award the RVCМ to national servicemen who did not serve the requisite period of 181 days qualifying service in Vietnam s22 s22 hand delivered s22 letter to your Chief of Staff on 19 July 2021, as well as his own supporting letter s22
 5. s22 submissions propose that the RVCМ be awarded to former national servicemen who at any time served at least 60 days but fewer than 181 days in Vietnam, and who were returned to Australian due to the expiry of their lawful term of enlistment. s22 contends it is within the power of the Australian Government to interpret the eligibility criteria of the RVCМ to achieve this.
 6. You discussed this matter with s22 on 12 August 2021. A meeting brief was provided to you under MB21-001306 (Attachment H) containing background to s22 campaign and drawing your attention to Defence seeking further legal advice on this matter from the Australian Government Solicitor.
 7. On 13 August 2021, your office initiated this task for comprehensive advice on two options:
 - introducing a new medal with detail as to how this can be progressed; and
 - awarding the RVCМ with an expanded eligibility, with the legal advice to be provided as soon as possible.
 8. On 22 August 2021, you stated a preference to proceed with awarding the RVCМ (Attachment I). On 10 September 2021, you reiterated this position and requested an immediate update on the timeline for delivery of this advice (Attachment J).
 9. On 13 September 2021, your office was provided with a timeline indicating when Defence’s advice on the RVCМ will be finalised (MS21-002195 – Attachment K). Also on that date, your office was given separate advice in response to four questions asked by the Electorate Office of the s22 (MB21-001443 – Attachment L).
 10. The Australian Government Solicitor finalised its advice to Defence on 14 September 2021 (Attachment M). This was provided to your office with the preliminary RVCМ advice on 15 September 2021 under MS21-002196 (Attachment N). s42 s42 s42
 11. Defence undertook to provide additional advice on the two options, including the necessary processes for each, by 30 September 2021. In addition, Defence has reviewed s22 submissions and provided advice against the key points he raised.

Background

Republic of Vietnam Campaign Medal

12. The RVCМ was established in 1964 by the former Government of the Republic of Vietnam. It is awarded for service in the prescribed area of operations in Vietnam during the period commencing on 31 July 1962 and ending on 28 March 1973.

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13. To be eligible for the medal, a person must have completed a minimum period of 181 days, either continuous or aggregated, unless they were killed on active service, wounded in action (i.e. classified as a Battle Casualty and evacuated as a result of those wounds), or captured and later released or escaped. Australian personnel, including national servicemen, who returned from Vietnam prior to completing the required period of service within the area of operations, and do not fall under one of the categories listed above, are not eligible to be awarded the RVCМ.
 14. In 1966, the Australian Government considered the case for accepting the former Government of the Republic of Vietnam's offer to award the RVCМ to Australian personnel. The Chiefs of Staff Committee agreed that accepting the RVCМ "would, from some points of view, be contrary both to the traditional practice that a foreign award should not be accepted for services which have been recognised by the grant of a British award, and their view that two campaign medals should not be granted for one campaign."
 15. The Committee though, noted the eligibility criteria of the RVCМ requiring six months qualifying service, were "more exacting" than those prescribed for the Vietnam Medal. The Committee viewed that "the conditions for the two medals were sufficiently different that the Vietnamese campaign medal could be accepted without departure from the rule that a foreign award may not be granted for services which have already been rewarded by the grant of a British award."
 16. The Minister for Defence endorsed this view to the Prime Minister. When the Prime Minister asked the Governor-General to seek Her Majesty The Queen's permission for acceptance of the offer from the Republic of Vietnam, he said "I have given the proposal careful consideration and I consider that there are exceptional grounds justifying acceptance of the Vietnamese offer."
 17. The submission to Her Majesty was made on behalf of the Australian and New Zealand Governments, as the latter was also keen to have the RVCМ approved for New Zealand Armed Forces personnel. The submission was coordinated between the Australian and New Zealand Governments, and the Australian and New Zealand Prime Ministers issued a joint statement announcing Her Majesty's decision.
 18. A timeline outlining the key developments relating to the award of the RVCМ to Australian personnel is provided at [Attachment Q](#).

Inquiries by the Defence Honours and Awards Appeals Tribunal

19. Between 2013 and 2015 the Defence Honours and Awards Appeals Tribunal (the Tribunal) conducted, at the direction of the Australian Government, two public inquiries into eligibility for the RVCМ. The Tribunal's inquiries concluded that the Government does not have the legal authority to amend the eligibility criteria of the award.
20. After considering the advice the Tribunal received from the Australian Government Solicitor, the Government accepted the Tribunal's recommendation "*that the eligibility criteria for the RVCМ should not be amended because the Australian Government does not have the legal authority to do so.*"

21. s22 [redacted] submissions raise a number of considerations. Defence has reviewed s22 [redacted] submissions and a detailed response is provided at Attachment P. In summary his main points include:
 - The Australian Government's power to determine eligibility for Australian personnel;
 - Including the motivation of the former Government of the Republic of Vietnam to award the RVCM to its allies;
 - Application of the 'end-of-war' provision;
 - The terms of enlistment and service obligations of national servicemen;
 - Incorrect issue of the RVCM by the Royal Australian Navy and to ineligible national servicemen;
 - Issuing of the RVCM to non-combatants such as Australian philanthropic representatives; and
 - Psychological injury as a form of wounded in action.
22. At the heart of s22 [redacted] submissions is a proposal that the RVCM be awarded to former national servicemen who at any time served at least 60 days but fewer than 181 days in Vietnam, and who were returned to Australia due to the expiry of their lawful term of enlistment. Underpinning s22 [redacted] proposal is the existence of an 'end of war' provision which reduced the prescribed qualifying period of the RVCM from six months to two months.
23. This 'end of war' provision came into effect on 28 January 1973, coinciding with the commencement of the ceasefire negotiated under the Paris Peace Accords. Under the terms of the ceasefire agreement all foreign military forces were to be withdrawn from Vietnam with 60 days. At that time there were ~23,000 United States Armed Forces personnel in Vietnam. Australia only had an Australian Embassy Guard Platoon of 25 to 30 personnel.
24. The Joint General Staff, Republic of Vietnam Armed Forces, granted this special waiver:

"To stimulate and enhance morale of Free World Military Assistance Forces who have served in Vietnam during the last phase (end) of the war." [original emphasis]
25. s22 [redacted] state the authority for the 'end of war' provision was the United States. This is not the case, rather, the United States authorities simply applied the 'end of war' provision to its own veterans who were serving in Vietnam on 28 January 1973 until cessation of eligibility for the medal on 28 March 1973. This is consistent with the intent of the waiver granted by the Joint General Staff, Republic of Vietnam Armed Forces.
26. The waiver was not intended to be applied in a permanent manner. However, s22 [redacted] seeks to have it applied to national servicemen who did not serve 181 days or more, irrespective of when they served in Vietnam. s33(a)(iii) [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

Way Ahead

27. You wish to award the RVCM to national servicemen who served between 60 to 180 days in Vietnam. Advice on how to progress this option is below.
28. Under cover of MS21-002196 (Attachment N), Defence advised that the Australian Government Solicitor s42 [redacted] s42 [redacted] s42 [redacted] Advice on how to progress this option is below.
29. Whichever course of action you decide on, all options must progress to, and be supported by the Minister for Defence. If supportive, the Minister for Defence approaches the Prime Minister, who in turn writes to the Governor-General. Depending on which option is supported, approval from Her Majesty The Queen may be required.
30. It can be expected that the Prime Minister will seek informed advice from his department as the policy owner for the Australian Honours and Awards System.
31. It is recommended that you do not advise s22 [redacted] of your support for either course of action while the matter is under consideration of the Government.

Option 1: Process for awarding the RVCM for less than 181 days service in Vietnam

32. As the Government of the Republic of Vietnam no longer exists, the Governor-General, on recommendation from the Prime Minister would need to give authority for the award to be extended. Following the Governor-General's approval, a legal instrument will need to be prepared.
33. s22 [redacted] s22 [redacted] If supported, Defence will assist the Minister for Defence with the required paperwork.
34. If all parties agree, Defence can accept applications from veterans immediately.
35. If not supported, Defence can draft a letter for you to send to s22 [redacted] explaining why you are unable to support his proposal and offer a possible alternative.

s47E(d)



s47E(d)

s33(a)(iii)

Sensitivities

40. While the process outlined above does not require the Minister for Foreign Affairs to be consulted, Defence recommends you do so prior to a decision being made. s22

s22

s33(a)(iii)

s33(a)(iii)

s42

42. Should you decide to proceed with proposing to award the RVCM to veterans who do not meet the current 181 day eligibility criteria, you may receive ministerial correspondence on behalf of people and groups opposed to this decision. You have already received correspondence from the s22

s22

s22

Organisations such as the s22

s22

s42

s42

43. If supported, this option would present a situation where the Government sets aside the findings of two independent Inquiries of the Defence Honours and Awards Appeals Tribunal. Defence also recommends engaging with the Chair of the Tribunal, Mr Stephen Skehill, before progressing this option.

44. Groups such as the Australian and New Zealand Military Imposter Group are active and Veterans may be given unwarranted attention, if they are awarded the RVCM for less than 181 days service. The Group's website already exposes a number of Vietnam veterans who have chosen to wear the RVCM even though they are not entitled to it.

45. Defence is unable to intervene if the Australian and New Zealand Military Imposter Group decides to publish embarrassing or damaging information about a veteran, as these concerns are a civil matter. However, having some knowledge of the Group's modus operandi, it is reasonable to expect them to have an interest in this decision and any subsequent challenges, should they occur.

46. s22 is advocating for recognition on behalf of national servicemen who served between 60 to 180 days in Vietnam. s47E(d)

s47E(d)

s47E(d)

48. While s22 [redacted] proposal supports recognition for national service veterans, s47E(d) [redacted]
s47E(d) [redacted]

49. It is within your discretion to include more veterans in either option. Defence recommends consideration is given to including more than less, to avoid disappointment and division on an already sensitive issue.

50. In 1966, when Her Majesty The Queen approved of the RVCM being awarded to Australian personnel, she also did so for New Zealand Armed Forces personnel. The submission seeking her approval was coordinated between the Australian and New Zealand Governments, and the Australian and New Zealand Prime Ministers issued a joint statement announcing Her Majesty's decision.

Option 2: Process of creating a new medal in the Australian Honours and Awards System

51. Introducing a new medal into the Australian Honours and Awards System is a significant undertaking that requires the support of the Government and the approval of the Sovereign.

52. The steps taken to institute a new medal follow well established protocols. These are coordinated through Defence, the Department of the Prime Minister and Cabinet (PM&C), Government House and external contractors. The following paragraphs outline the general process.

53. It is the responsibility of the Minister for Defence to submit a proposal to the Prime Minister for a new Australian medal to recognise a particular aspect of Defence service. If the Prime Minister supports this, he will ask the Governor-General to approach Her Majesty The Queen and request 'in-principle' approval for a new medal.

54. Once this has occurred, Defence in consultation with PM&C will draft the Letters Patent and Regulations for the new medal. Concurrently, work will occur on the design of the medal and the medal ribbon. Approval of the design will be sought from the Chief of the Defence Force and the Prime Minister, through the Minister for Defence.

55. The draft Letters Patent, Regulations, and the medal and medal ribbon designs are then presented to Her Majesty for Her formal approval. Government House publishes the signed Letters Patent and Regulations in the Commonwealth of Australia Gazette, and arranges for the Governor-General to formally determine the design aspects in a separate instrument made under the Regulations.

56. It will then fall to Defence to have the medal manufactured, to receive applications and assess entitlements to the new medal, and coordinate with existing contractors the engraving and dispatching of the medal to eligible recipients.

57. Defence previously advised that if all parties agree, approval could be sought within two to three months. Announcements could follow, and Defence could accept applications and begin assessing. However, medals would take longer to manufacture, engrave and dispatch.
58. Once approval is given, manufacturing can take three months before stock is secured and ready for issue. Costings of a new medal are provided as part of the approval process. This includes the cost of design work, manufacture of dies and production of samples. Based on current estimates a medal set for a new Australian medal would cost approximately s47E(d) to manufacture.
59. s47E(d) Precedent was set for this practice when the Vietnam Logistic and Support Medal was introduced in 1993. The design of that medal was close to the design of the Vietnam Medal, with the most striking difference being the design of the medal ribbon.
60. To progress this option, s22 If supported, Defence will assist the Minister for Defence with the required paperwork.
61. If not supported, Defence can draft you a letter to s22 explaining why you are unable to support his proposal and offer a possible alternative.
62. Defence previously advised that one option available is to engage s22 in the planning for commemorative activities marking the 50th Anniversary of the end of the Vietnam War, in 2023. Commemorative activities of this nature are managed by DVA. In the past, the DVA has commissioned commemorative medallions to be issued to veterans as a means of remembering their service. This option could be presented to s22 if neither option is supported.

Sensitivities

63. This option allows the Government to determine eligibility, and could easily be more inclusive than s22 proposal.
64. PM&C has previously advised Defence that when it weighs consideration of introducing new medallic recognition, a determining factor is whether the proposal fills a recognition gap in the Australian Honours and Awards System. It also considers the issue of double medalling; that is, the same service should not be recognised twice with a medal.

Other considerations

Existing Recognition for Vietnam Service

65. A number of awards already exist to recognise the service of Australian Vietnam veterans, subject to the circumstances of an individual's service history:
- Australian Active Service Medal 1945-1975 with Clasp 'VIETNAM';
 - General Service Medal 1962 with Clasp 'SOUTH VIETNAM';
 - Vietnam Medal;
 - Vietnam Logistic and Support Medal; and
 - Republic of Vietnam Campaign Medal.

66. Information and images for each medal are provided at [Attachment R](#).
67. National servicemen, irrespective of whether they served in Vietnam or not, may also be awarded the Australian Defence Medal and the Anniversary of National Service 1951-1972 Medal. The Anniversary of National Service 1951-1972 Medal was established in 2001 as an anniversary medal commemorating National Service as an event in Australian history with the target group being national servicemen who participated in the two National Service schemes.

Purpose of medallic recognition

68. Medallic recognition offers a symbolic avenue for Australia to thank military personnel and some civilians for exceptional service. They tell a story for veterans and can become an emotive subject for many. By wearing medals and telling a story, it also separates veterans' groups from one another.
69. National service is one such example. As a group eligible national servicemen have been awarded the Anniversary of National Service 1951-1972 Medal to recognise their service and sacrifice to Australia. Australian Regular Army personnel were not afforded this medal. As such, national servicemen when wearing their medals can be readily identified.
70. The Vietnam Medal and the Vietnam Logistic and Support Medal are similar medals; the only material difference is the design of the medal ribbon. A veteran cannot lawfully be awarded both medals as they purposely recognise different types of service.
71. Defence can empathise with s22 proposal. To a group that did not meet the eligibility criteria it may seem unfair or unjust that they did not qualify for the RVCM, despite performing the same service as their peers, albeit for a shorter period of time. This situation is reflected in many awards and impacts veterans and current serving personnel whose operational service may not meet prescribed eligibility criteria.
72. If either option is supported, it is likely further lobbying from other aggrieved veterans' groups could follow.

Diplomatic relations

s33(a)(iii)



s47E(d)



s33(a)(iii)



s33(a)(iii)

Consultation – internal/external

75. The following people were consulted on this matter:

- s47F Deputy Chief General Counsel, Australian Government Solicitor;
- David Lewis, Assistant Secretary Southeast Asia, International Policy Division;
- Defence Attaché Hanoi and Head of Mission; and
- s22 DPG Special Counsel, Defence Legal.

76. s47F is available to meet with or brief you concerning the Australian Government Solicitor's legal advice.

Consultation – Secretary/CDF

77. The Secretary and the Chief of the Defence Force have received copies of the previous ministerial briefs on this matter, and the Chief of the Defence Force is familiar with s22 campaign.

Sensitivities

78. Sensitivities that are relevant to each option are discussed separately in those sections of the brief.

Financial/systems/legislation/deregulation/media implications

79. Vietnam veterans are active in the ex-Service community. Some hold differing views on the RVCM and this may draw media attention. Veterans' groups not associated with Vietnam may hold similar views.

s33(a)(iii)

Attachments

Attachment A

s22

Attachment B

s22

Attachment C

s22



- Attachment D** s22
- Attachment E** s22
- Attachment F** s22
- Attachment G** s22
- Attachment H** MB21-001306: Meeting with s22
- Attachment I** Notes by Minister for Defence Personnel on MB21-001306, 22 August 2021
- Attachment J** Minister for Defence Personnel memorandum, 10 September 2021
- Attachment K** MS21-002195: Timeline for RVCM Advice
- Attachment L** MB21-001443: MO Advice - s22 RVCM OMINDP Questions
- Attachment M** Australian Government Solicitor legal advice, 14 September 2021
- Attachment N** MS21-002196: Preliminary RVCM Advice
- Attachment O** Republic of Vietnam Campaign Medal – Timeline – 1965 to 2015
- Attachment P** Defence’s consideration of points raised by s22
- Attachment Q** s47E(d)
- Attachment R** Australian Variants of the Republic of Vietnam Campaign Medal

Authorising Officer

Cleared by:

Lisa Phelps
 First Assistant Secretary
 People Services

Date: 30 September 2021
 Mob: s22

Contact Officer: s22 A/Assistant Secretary Human Resource Services, Defence People Group, Ph: s22
 s22

Through: Secretary CDF

CC:
 Assoc Sec, VCDF, DEPSEC DP, DCC, FASMECC





MINISTER: Minister for Defence Personnel

ADVISER: s47E(d)

URGENT - Meeting with s22 - Republic of Vietnam Campaign Medal

Minister's arrival time: N/A – Teleconference

Meeting commencement time: 0930

Date and Location: 12 August 2021, via phone

Person/Organisation

A private meeting with s22, regarding the Republic of Vietnam Campaign Medal. s22

s22

Has the Minister met with this person/organisation in the past?

No.

Purpose of Meeting

What are s22 seeking?

- s22 are seeking to have the Australian Government award the Republic of Vietnam Campaign Medal to Australian national servicemen who at any time had served at least 60 days but less than 181 days in South Vietnam when they reached the end-of-term of service for which they were enlisted.
- On 5 July 2021, s22 appealed to you to reconsider the decision of the former Minister for Defence Personnel not to award the Republic of Vietnam Campaign Medal to national servicemen who did not serve the requisite period of qualifying service in Vietnam (Attachment C).
- On 19 July 2021, s22 hand-delivered to your office his own letter of support to s22 campaign (Attachment D).

What are the Government's objectives?

- To listen to s22 concerns and assure them their submissions are being reviewed and that you are giving them your full consideration.

Key Messages

- The Government acknowledges s22 passionate and long-standing advocacy on this matter.
- You will consider s22 recent submissions.
- Talking Points are provided at [Attachment B](#).

Background

- A number of awards exist to recognise the service of Australian personnel in Vietnam veterans:
 - Australian Active Service Medal 1945-1975 with Clasp 'VIETNAM';
 - General Service Medal 1962 with Clasp 'SOUTH VIETNAM';
 - Vietnam Medal;
 - Vietnam Logistic and Support Medal; and
 - Republic of Vietnam Campaign Medal.
- National servicemen, irrespective of whether they served in Vietnam or not, may also be awarded the Australian Defence Medal and the Anniversary of National Service 1951-1972 Medal.
- The Republic of Vietnam Campaign Medal was established in 1964 by the former Government of the Republic of Vietnam. It is awarded for service in the prescribed area of operations in Vietnam during the period commencing on 31 July 1962 and ending on 28 March 1973.
- To be eligible for the medal a person must have completed a minimum period of 181 days, either continuous or aggregated, unless they were killed on active service, wounded in action (i.e. classified as a Battle Casualty and evacuated as a result of those wounds), or captured and later released or escaped. Australian personnel, including national servicemen, who returned from Vietnam prior to completing the required period of service within the area of operations, and do not fall under one of the categories listed above, are not eligible to be awarded the Republic of Vietnam Campaign Medal.
- Between 2013 and 2015 the Tribunal conducted two public inquiries into eligibility for the Republic of Vietnam Campaign Medal. The inquiries concluded that the Australian Government does not have the legal authority to amend the eligibility criteria of the award. After considering the advice the Tribunal received from the Australian Government Solicitor, the Government accepted the Tribunal's recommendation that the 181 days qualifying period for the Republic of Vietnam Campaign Medal remains extant. The Tribunal's Inquiry reports are at [Attachments E and F](#).

s22

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s22

s22

- On 24 February 2021, s22 made representations on behalf of s22 about the eligibility criteria of the Republic of Vietnam Campaign Medal. s22 representation included letters of support and independent legal advice s22 obtained from s22. The former Minister for Defence Personnel, the Hon Darren Chester MP, wrote to s22 on 3 June 2021, advising that the submission by s22 did not advance any new legal issues or considerations that would allow the Australian Government to amend the existing eligibility criteria for the Republic of Vietnam Campaign Medal (Attachment H).
- s22 made new submissions to your office on 5 July 2021 and 19 July 2021 respectively, seeking your reconsideration of the former Minister's decision in this matter. Defence is considering these submissions and seeking advice from the Australian Government Solicitor.
- Options you may wish to consider include:

Seeking advice from the Defence Honours and Awards Appeals Tribunal (the Tribunal)

The Tribunal may be able to provide an informed view on the merits of establishing a new Inquiry focusing on the Republic of Vietnam Campaign Medal or recognition for Vietnam veterans in a broader context. This could explore recognition options and hear the views of the Vietnam veteran community.

The Tribunal has conducted two Inquiries into the Republic of Vietnam Campaign Medal. These focused on specific questions with regard to eligibility. Discussing the merits of a third is a matter you could raise with the Chair of the Tribunal.

Inviting s22 to be engaged with any initiatives that may be planned to commemorate the 50th anniversary of the end of Australia's involvement in the Vietnam War.

Australia will commemorate this anniversary in 2023. This option involves engaging with the Department of Veterans' Affairs which is responsible for coordinating commemorations.

Asking Defence to consider producing a commemorative recognition item or device outside of the Australian Honours and Awards System.

Producing a non-medallic commemorative recognition item or device outside of the Australian Honours and Awards System can be achieved through a recommendation by the Chief of the Defence Force, and approval and announcement by the Minister.

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Introducing a new medal into the Australian Honours and Awards System is a significant undertaking. It is not recommended in relation to the Vietnam War as this service is already well recognised with a number of awards. Consideration of a new medal requires the support of the Government and the approval of the Sovereign.

Awarding the Republic of Vietnam Campaign Medal in the manner suggested by s22 and his Supporters (if legal advice confirms the Government can lawfully do so).

Defence is engaging the Australian Government Solicitor to re-examine whether or not the Government can lawfully amend the eligibility criteria for the Republic of Vietnam Campaign Medal, or award it in the manner suggested by s22 and his supporters. Defence anticipates this will take up to two months.

List of Attendees

s22

Consultation

- N/A

Attachments

<u>Attachment A</u>	s22
<u>Attachment B</u>	Minister's talking points
<u>Attachment C</u>	Letter from s22, 5 July 2021
<u>Attachment D</u>	Letter from s22 19 July 2021
<u>Attachment E</u>	<i>Report of the Inquiry into Eligibility for the Republic of Vietnam Campaign Medal (24 March 2014)</i>
<u>Attachment F</u>	<i>Report of the Inquiry into the feasibility of amending the eligibility criteria for the Republic of Vietnam Campaign Medal (25 June 2015)</i>
<u>Attachment G</u>	s22
<u>Attachment H</u>	s22

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Authorising Officer	
Cleared by:	s22 [REDACTED]
Lisa Phelps First Assistant Secretary People Services	
Date: 10 August 2021	
Mob:	s22 [REDACTED]

- **Contact Officers:** Leisa Craig, Assistant Secretary Human Resource Service, Ph: s22 [REDACTED]
s22 [REDACTED] Director Honours and Awards, Ph: s22 [REDACTED]

CC:
Secretary, CDF, Assoc Sec, VCDF, DEPSEC DP, FASMECC

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Attachment B: Ministerial Talking Points

- Thank you for your submissions about the Republic of Vietnam Campaign Medal. I intend to review and consider them in detail.
- I assure both of you, your service to Australia is valued. Your long-standing advocacy on behalf of our National Service veterans and their families, is commendable and appreciated.
- I have asked the Department of Defence to obtain further advice on the matters you have brought to me, and to present me with considered options. I expect this process to take up to two months.

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Minister's comments

- (a) I wish to proceed with the awarding of the Republic of Vietnam Campaign Medal.
- (b) Given the existing legal advice on the matter it should not be necessary to wait "up to two months" for further advice.
- (c) Please provide instructions as to progressing (a) within the next 7 days.
- (d) I would like this whole issue expedited.
Thank you for your assistance.

s22

22/8/21

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MEMORANDUM
OFFICE OF THE MINISTER FOR VETERANS' AFFAIRS AND
DEFENCE PERSONNEL

TO: Department of Defence

FROM: The Hon Andrew Gee MP, Minister for Veterans' Affairs and
Defence Personnel

DATE: 10 September 2021

Further to my previous request to the Department that:

- a. I wish to proceed with the awarding of the RVC
- b. Given the existing legal advice on the matter it should not be necessary to wait up to two months for further advice
- c. Please provide particulars as to progressing point (a) within the next seven days
- d. I would like this whole matter expedited

I would be grateful for an immediate update on the timeline for delivery of the abovementioned and I reiterate my request in the points contained above be expedited.

Thank you for your assistance.

s22

Andrew Gee MP

Dated: 10/9/21



To: Minister for Defence Personnel
Adviser: s47E(d)
For Info: Minister for Defence
Subject: Timeline for RVCМ Advice

Purpose

Your office requested (Memorandum 10 Sep 21) an immediate update on the timeline of when the departmental advice regarding the Republic of Vietnam Campaign Medal (RVCМ) will be provided.

Background

1. On 22 August 2021 your office requested comprehensive advice regarding the options for awarding the RVCМ to veterans who served between 60 to 180 days and therefore do not meet the prescribed eligibility criteria.
2. As part of the advice, on 25 August 2021 Defence requested legal advice from the Australian Government Solicitor.
3. Initially the advice was expected on 6 September 2021, which was later revised to 13 September 2021 to facilitate internal consultation within AGS.

Key Issues

4. The timeline of advice is below:
 - Afternoon 13 September 2021 –AGS is providing legal advice to the Department of Defence.
 - 15 September 2021 – Defence will provide your office with a copy of the AGS legal advice, details of the number of impacted Veterans and additional advice from International Policy Division.
 - 30 September 2021 – Defence will provide considered advice on the two primary options, including the necessary processes for each option. For example:
 - a. Issuing the RVCМ to veterans who served less than 181 days. This includes drafting the legal instruments, seeking approvals (expected to be through Minister for Defence to the Governor-General) and manufacture of additional medals; or
 - b. Introducing a new medal into the Australian Honours and Awards System. This includes establishing draft Regulations and eligibility criteria, consulting relevant stakeholders,

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designing medal options, considering manufacturing timelines and seeking appropriate approvals.

Consultation

5. The following people have been consulted on this matter:

s47F [redacted] - Deputy Chief General Counsel, Australian Government Solicitor

s22 [redacted] Special Counsel-DPG, Defence Legal

Sensitivities

6. Nil.

Authorising Officer	
Cleared by:	s22 [redacted]
Lisa Phelps First Assistant Secretary People Services	
Date: 13 September 2021 Ph: s47E(d) [redacted]	

Contact Officer: s22 [redacted] Director Honours and Awards, Ph: s22 [redacted]

CC:

Secretary, CDF, Assoc Sec, VCDF, DEPSEC DP, FASMECC

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To: Minister for Defence Personnel
Adviser: s47E(d)
For Info: Office of the Minister for Defence
Subject: MO Advice - s22 RVCM OMINDP Questions

Purpose

Your office requested responses to the following questions from the s22 s22 in relation to the Republic of Vietnam Campaign Medal (RVCM).

Background

1. s22 has been campaigning for recognition for National Servicemen who did not complete 181 days service in Vietnam, to receive the Republic of Vietnam Campaign Medal. The meeting brief provided for your 12 August 2021 meeting with s22 details further background to s22 campaign (MB21-001306).
2. The Department is seeking further legal advice on the options available for Australia to award the Republic of Vietnam Campaign Medal to members who served between 60 to 180 days service in Vietnam. The legal advice from the Australian Government Solicitor has been received on 13 September 2021.
3. On the 15 September 2021, Defence is providing the Minister the legal advice, information on the number of veterans impacted and advice from International Policy Division.
4. On 30 September 2021, Defence is providing the Minister a comprehensive brief on the option to either award the RVCM to veterans who served less than 181 days or propose a new medal be introduced into the Australian Honours and Awards System. Both options are complex and require careful consideration.

Key Issues

5. On 13 September 2021, your office requested responses to four questions. The questions and answers follow.

Is the medal requirement for US Service personnel also 181 days. If not why?

6. The criteria applied to United States Army personnel is laid down in Department of the Army Regulation 600-8-22, 'Military Awards'. The latest iteration of Army Regulation 600-8-22 is dated

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5 March 2019, and the criteria specified for the RVCM is consistent with previous iterations of the Regulation.

7. Army Regulation 600-8-22 specifies service in the Republic of Vietnam for six months. United States personnel “assigned in the Republic of Vietnam on 28 January 1973” must have served a minimum of 60 days in the Republic of Vietnam as of that date, or have completed a minimum of 60 days service in the Republic of Vietnam during the period from 28 January 1973 to 28 March 1973, inclusive.
8. Australia applies a period of 181 days service in Vietnam. This is the least number of days that make up a period of six-months if served consecutively.
9. Defence is aware of a similar 60 day service provision that was applied to the Australian Embassy Guard Platoon that remained in Vietnam during 1973. Further research, including examining hard copy files, which are located in the office, is required to verify this aspect and under what authority it was made.
10. This will be addressed in later advice.

If Australia harmonised with the US, how many service personnel are estimated to become eligible?

11. In December 1972, the main body of Australian troops then remaining in Vietnam, known as the Australian Army Assistance Group, was withdrawn except for a small number which were transferred to the Australian Embassy Staff to provide guards and escorts. This was known as the Australian Embassy Guard Platoon. The Australian Embassy Guard Platoon served on in South Vietnam until 1 July 73 when it was withdrawn in its entirety. The strength of the Australian Embassy Guard Platoon was approximately 25 – 30 personnel.

Has the medal ever been inadvertently awarded to Australian Vietnam service personnel who served less than 181 (injury exempted). If so why/how?

12. Defence is aware that historically, a number of RVCM were inadvertently awarded to approximately 3000 Royal Australian Navy personnel who deployed in HMA Ships *Brisbane*, *Hobart*, *Perth* and *Vendetta*. Collectively, these ships undertook nine deployments to Vietnam between 1967 and 1971, where they conducted naval gunfire support operations with the United States Navy Seventh Fleet. The ships’ companies had not met the 181 days service in Vietnam criterion, and few were subject to the short-service eligibility clauses.
13. The reason for the awarding was due to the then Department of the Navy interpretation of the qualifying conditions for the RVCM, which was that the entire period of allotted service would count as qualifying service for the medal. The periods of allotted service of the nine deployments varied in duration from 204 to 222 days.

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14. The period of allotment included all transit time to and from the operational area of Vietnam; which for the purpose of veterans' benefits and repatriation entitlements was correct; however for the purpose of the RVCN, only service rendered in the operational area of Vietnam was to be counted as qualifying service.
15. The Navy practice of counting the periods of allotted service on these deployments as qualifying service for the RVCN continued for some time. In practical terms though, Navy had physically issued the RVCN to those personnel by the early 1970s.
16. In 1987, the Chief of the Defence Force and the Director General Service Personnel and Policy advised the Navy that its original interpretation of eligibility for the RVCN for these personnel was incorrect, and that they should only be awarded the medal after six months service in the operational area of Vietnam. No period on transit should be included in the calculation.
17. Navy acknowledged this advice in April 1987, and advised that in future, award of the RVCN would occur only on the basis of service in Vietnam during a period of allotment.
18. On 13 January 1987, the Chief of the Defence Force advised that "... Awards of the Medal [the RVCN] were made to and accepted by recipients in good faith. Partly for this reason, there is no suggestion that an attempt should be made to recover medals already awarded under the conditions applied by Navy. This view was reflected in [Director General Service Personnel and Policy's] advice of 15 December 1986 to the Minister."
19. The undertaking to not retrieve the incorrectly awarded medals has to date been maintained. This aspect was discussed in the first Defence Honours and Awards Appeals Tribunal Inquiry in 2014 into the RVCN.
20. If an award has been inadvertently issued to a person, other than the known Navy cases, Defence would consider it an administrative error. In the past decade, Defence is aware of at least three cases; one in each Service where the medal has been historically issued in error.

In the 2015/16 Inquiries into this matter, which submissions opposed relaxation of the 181 days and of those, which had named authors of their submission?

21. Defence does not have access to the submissions made to the two Defence Honours and Awards Appeals Tribunal inquiries into eligibility for the RVCN. The Tribunal does not share private submissions with Defence unless a submitter expressly authorises the Tribunal to do so. Should you wish to access submission made to the Inquiry, you could request that of the Defence Honours and Awards Appeals Tribunal.
22. In the "Report of the Inquiry into Eligibility for the Republic of Vietnam Campaign Medal" (24 March 2014), the Tribunal observed:

"While most submissions received by the Tribunal argued for some changes to the criteria or the interpretation of them to meet the needs of the claimants, the Tribunal received a smaller number of submissions, including from the Department of Defence, the Returned and Services

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League, the No 9 Squadron Association, the Vietnam Veterans' Federation of Australia ACT (Inc) and the Vietnam Veterans' Association of Australia, which argued that the criteria and its current interpretation should not be changed."

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24. In the "Report of the Inquiry into the feasibility of amending the eligibility criteria for the Republic of Vietnam Campaign Medal" (25 June 2015), the Tribunal referenced a submission from s22 s22 who argued that the Australian Government did not have the power to change the eligibility criteria.

Consultation

25. Nil.

Sensitivities

26. United States Army Regulation 600-8-22 was made for a specific purpose. Legal advice from the Australian Government Solicitor, provided today, is expected to explain this in more detail.

Authorising Officer

Cleared by: s22
Lisa Phelps
First Assistant Secretary
People Services
Date: 13 September 2021
Ph: s47E(d)

Contact Officer: s22 A/Assistant Secretary Human Resource Services,
Ph: s47E(d)

CC:
Secretary, CDF, Assoc Sec, VCDF, DEPSEC DP, FASMECC

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Australian Government
Department of Defence

Background Brief

For information

PDMS Number: MS21-002196

To: Minister for Defence Personnel
Adviser: s47E(d)
For Info: Minister for Defence
Subject: Preliminary RVCM Advice

Purpose

To provide you with preliminary advice regarding the possible awarding of the Republic of Vietnam Campaign Medal (RVCM) to veterans who served less than 181 days in Vietnam.

Background

1. On 22 August 2021, the Minister requested to proceed with awarding the RVCM to veterans who served between 60 to 180 days in Vietnam. The Minister reiterated this request in his Memorandum of 10 September 2021 ([Attachment A](#)).
2. As part of the advice, on 25 August 2021 Defence requested legal advice from the Australian Government Solicitor. Defence received the additional Australian Government Solicitor advice on 13 September 2021 ([Attachment B](#)). Also on 13 September 2021, Defence provided you a timeline of when to expect advice from Defence regarding this issue, under MS21-002195. This is at [Attachment C](#).
3. In preparing this advice, Defence also sought advice from International Policy Division within Defence and statistical data from the Department of Veterans' Affairs.

Key Issues

Australian Government Solicitor Legal Advice

4. The Australian Government Solicitor advice is provided at [Attachment B](#). s42
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[Redacted]

10. Your office has recently received correspondence restating opposition from s22

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[Redacted]

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[Redacted]

12. The process to establish a new Australian award within the Australian Honours and Awards System involves the Minister for Defence putting a proposal to the Prime Minister. The Prime Minister will consider advice of the Department of the Prime Minister and Cabinet, as it is

responsible for whole of government honours and policy, including proposals to institute new awards.

13. If the Prime Minister supports a proposal for a new award, he will ask the Governor-General to seek in principle approval for the new award from Her Majesty The Queen. Draft Regulations and medal and ribbon designs can then be considered. The Queen approves all Letters Patent, Regulations and amendments to Regulations for awards in the Australian Honours and Awards System.
14. With all parties agreeing this approach, the process of seeking approvals and developing Regulations and designs is expected to take two to three months. These will be outlined more fully in advice on 30 September 2021, along with some expedited early design options.
15. Alternatively, the timeframe could correspond with any planned activities for the 50th Anniversary of the end of the Vietnam War in 2023, managed by the Department of Veteran's Affairs. Engaging Vietnam Veterans and seeking their ideas and contributions could be a valuable inclusion.

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s47E(d)

s33(a)(iii)

s33(a)(iii)



s33(a)(iii)



Department of Veterans' Affairs Statistical Data

19. The Department of Veterans' Affairs maintains the Nominal Roll of Vietnam Veterans which honours and commemorates approximately 61,000 people who served in the Australian Defence Force during the period 23 May 1962 to 29 April 1975 either in Vietnam or in the waters adjacent to Vietnam.

s47E(d)



22. While the data identified a substantial number of Royal Australian Navy veterans as purporting to have 61 to 180 days service in Vietnam, Defence considers this data to be misleading and not a true reflection of those veterans' actual service in Vietnam.

23. Approximately 75 percent of all Royal Australian Navy Vietnam Veterans served in the fast troop transport HMAS *Sydney* or in one of the many warships assigned to escort HMAS *Sydney* on that

ship's more than 40 voyages to and from Vietnam. These ships typically visited Vietnam for one or two days. The longest visit by HMAS *Sydney* was four days duration.

24. Because the Nominal Roll data reflects periods of service that a veteran was allotted for operational service in Vietnam under the *Veterans' Entitlements Act 1986*, the Nominal Roll credits the duration of the whole voyage to and from Vietnam. In some cases this can be as long as a 15 to 20 day round trip, of which only one or days was actually spent in Vietnam. Therefore, it can be seen that a naval Vietnam Veteran credited by the Nominal Roll as having, for example, 100 days of Vietnam service, may in fact have no more than five to 10 days service in Vietnam, aggregated across five or six voyages.

Way Ahead

25. Defence will provide a separate brief under MB21-001330 by 30 September 2021 which will comprehensively address s22 proposal and provide advice for progressing either option.

Consultation

26. The following people were consulted on this topic:

s47F Deputy Chief General Counsel, Australian Government Solicitor

s22 Director Southeast Asia, International Policy Division

s22 Special Counsel (DPG), Defence Legal

Sensitivities

27. The Minister recently received correspondence from s22

s22

s22

28. s47E(d)

29. Recognising all Vietnam Veterans who served less than 181 days is more inclusive, however, awards fulfilling that purpose already exist: the Australian Active Service Medal 1945-1975 with Clasp 'VIETNAM', the Vietnam Medal and the Vietnam Logistic Support Medal. Traditionally, the Department of Prime Minister and Cabinet support new awards where there is a gap in the medallic recognition.

30. Awarding the RVCM for less than 181 days service in Vietnam may be perceived to devalue the high esteem held by the more than 40,000 Australian veterans who have received the award consistent with the eligibility criteria established by the former Government of the Republic of Vietnam.

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31. As a cohort, Vietnam Veterans are active in the ex-serving community and there has been a division between veterans of Permanent Forces volunteers (such as those in the Australian Regular Army), and National Service veterans. National Servicemen receive a specific award to recognise their service and sacrifice, the Anniversary of National Service 1951-1972 Medal, for which Australian Regular Army veterans are not eligible. In addition, eligibility for the Australian Defence Medal has been extended to National Service veterans. This has aggrieved some elements within the ex-service community, prompting regular lobbying for a new medal specifically for veterans who volunteered to service in the Australian Army.
 32. Defence is not aware if s22 would support an alternative Australian award to recognise veterans in his circumstance. While proposing a new award is feasible, this option may not satisfy s22 desire for veterans to be awarded the RVCN.
 33. s22 of how the United States armed forces applies the 60 days service in Vietnam criterion. The United States applies this only to personnel serving in Vietnam on 28 January 1973 until cessation of eligibility for the medal on 28 March 1973.. Whereas s22 is advocating for such a provision to apply to Australian National Service veterans irrespective of when they served in Vietnam.

Attachments

- Attachment A** 20210910 Memorandum OMINDP - RVCN
- Attachment B** Australian Government Solicitor Advice, 13 September 2021
- Attachment C** Ministerial Submission MS21-002195: Timeline for RVCN Advice

Authorising Officer	
Cleared by:	s22
Lisa Phelps First Assistant Secretary People Services	
Date:	September 2021
Mob:	s22

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CC:
Secretary, CDF, Assoc Sec, VCDF, DEPSEC DP, FASMECC, DCC, DEPSEC SP&I

Republic of Vietnam Campaign Medal – Timeline – 1965 to 2015

Date	Development
1 September 1965	<p>The Chief of the Joint General Staff, Republic of Vietnam Armed Forces issues Directive HT 655-430 prescribing the eligibility criteria of the RVCN.</p> <p>In its original form, Article 43 of Directive HT 655-430 provided that:</p> <p><i>“Allied soldiers assigned to the Republic of Vietnam after 6 months in war time with mission to assist the Vietnamese Government and the RVNAF [Republic of Vietnam Armed Forces] to fight against armed enemies, are eligible for Campaign Medal decorations; they would be awarded with Campaign Medal under conditions anticipated in Article 2 of this Directive.”</i></p>
7 February 1966	<p>The United States Secretary of Defense approves acceptance of the Republic of Vietnam officer to award the RVCN to United States Armed Forces personnel.</p>
22 March 1966	<p>The Republic of Vietnam amends Article 3 of Directive HT 655-430. The amended Article 3 now provides that:</p> <p><i>“Foreign military personnel serving in South Vietnam for six months during wartime and those serving outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF for six months in their struggle against an armed enemy will also be eligible for the award of the campaign medal.</i></p> <p><i>Foreign authorities will determine eligibility of their personnel for this award. Foreign military personnel are also entitled to this award under the special conditions provided for in Article Two of the directive.”</i></p>
24 March 1966	<p>The Chief of the Joint General Staff, Republic of Vietnam Armed Forces issues Memorandum Nr 48/TTM/QD/CDBT, authorising the United States to determine eligibility of United States Armed Forces personnel.</p>
13 June 1966	<p>The Australian Ambassador to Saigon states the Republic of Vietnam is keen to offer the RVCN to Australians, but that it would like an indication if the offer would be accepted before taking formal steps.</p>
24 June 1966	<p>Prime Minister Holt asks to the Governor-General to seek Her Majesty The Queen’s permission for acceptance of the offer from the Republic of Vietnam, and permission be given for Australian personnel who qualify for it to wear it.</p>
25 June 1966	<p>Her Majesty The Queen gives Her informal agreement to the acceptance and wearing of the RVCN for Australian and New Zealand personnel.</p> <p>Buckingham Palace also approves the making of an official announcement in advance of Her Majesty’s formal approval.</p>

<i>Date</i>	<i>Development</i>
26 June 1966	On behalf of the Government of the Republic of Vietnam, the Secretary of State for Foreign Affairs formally offers the RVCM to Australian personnel.
27 June 1966	The Prime Ministers of Australia and New Zealand issue a joint statement announcing Her Majesty's approval.
31 August 1966	The Chief of the Joint General Staff, Republic of Vietnam Armed Forces issues Memorandum Nr 183/TTM/QD/CDBT, authorising Australia to determine eligibility of Australian personnel.
27 January 1973	The original terminal date for the RVCM for Australian personnel. This date was arbitrarily set by the Department of Defence as it aligned with the terminal date of the Vietnam Medal and the signing of the Paris Peace Accords.
28 January 1973	The ceasefire negotiated under the 'Agreement on Ending the War and Restoring Peace in Vietnam' comes into effect. It calls for the withdrawal of United States and allied forces within 60 days. The only Australian military unit remaining in Vietnam at this time was the Australian Embassy Guard Platoon.
28 January 1973	By Republic of Vietnam Memorandum Number 149, "To stimulate and enhance morale of Free World Military Assistance Forces who have served in Vietnam <u>during the last phase (end) of the war</u> , the JGS/RVNAF [Joint General Staff/Republic of Vietnam Armed Forces] decides to grant a special waiver for the minimum time in service required for recommending and considering RVNAF awards which are granted to Allied personnel for meritorious service." [original emphasis] Annex A to the Memorandum provides that the waiver of the 'minimum time' for the campaign medal is two months, and states "The waiver prescribed by this Annex is not applied in a permanent manner. It is only used <u>in the last phase (end) of the war in Vietnam</u> ." [original emphasis]
29 March 1973	The United States Military Assistance Command, Vietnam, is deactivated and the last United States Armed Forces personnel leave Vietnam.
1997	Following a review of Service Entitlement Anomalies and research into the claims of two former members of the Australian Embassy Guard Platoon, it is decided to align the terminal date for the RVCM for Australian personnel with United States practice, that is, 28 March 1973.

Date	Development
<p>1997 (continued)</p>	<p>The review found the date of 27 January 1973 was arbitrarily set by Defence. It was not imposed by the Government of the Republic of Vietnam as that Government ceased to exist in 1975 without declaring a terminal date. The Review also took into account the terminal date for United States Armed Forces personnel and the implications of the ceasefire agreement.</p> <p>The then Minister for Defence Industry, Science and Personnel was informed of the decision, as was the Minister for Defence.</p> <p>The decision benefited five former members of the Australian Embassy Guard Platoon, as they reached the eligibility threshold of 181 days service in Vietnam before 28 March 1973. All other members of the Australian Embassy Guard Platoon qualified for the RVCM before 27 January 1973.</p>
<p>24 March 2014</p>	<p>The Defence Honours and Awards Appeals Tribunal reports the findings of the 'Inquiry into Eligibility for the Republic of Vietnam Campaign Medal'.</p> <p>The Tribunal makes the following recommendations:</p> <ol style="list-style-type: none"> 1. No action be taken by the Australian Government to change the criteria for the award of the RVCM. 2. The Department of Defence amend its interpretation of 'wounded-in-action' to include psychological injury under the following conditions: <ul style="list-style-type: none"> - the injury would need to be incurred as a result of enemy action; - the injury would need to be noted on the member's medical records at the time; and - the casualty would need to be evacuated from the operational theatre as a result of this particular injury. 3. The Department of Defence continue to assess applications for the RVCM using the present criteria with the recommended change to the interpretation of wounded-in-action, see Recommendation 2. <p>These recommendations are accepted by the Government.</p>
<p>25 June 2015</p>	<p>The Defence Honours and Awards Appeals Tribunal reports the findings of the 'Inquiry into the feasibility of amending the eligibility criteria for the Republic of Vietnam Campaign Medal'.</p> <p>The Tribunal recommended that the eligibility criteria for the Republic of Vietnam Campaign Medal not be amended because the Australian Government does not have the legal authority to do so.</p> <p>This recommendation was accepted by the Government.</p>

Defence's consideration of matters raised by s22

Australian Government's power to determine eligibility for Australian personnel

1. s22 and his supporters have advocated that they are not asking the Government to change or amend the criteria for the RVCN, rather they are requesting the Government to exercise its discretionary power to determine eligibility for Australian Defence Force personnel. This proposal is not well considered and presents a number of risks to the Government.

s42

3. Defence does not disagree with the view that the Australian Government was delegated the power to determine eligibility for Australian personnel to the RVCN. Defence continues to respect that power to this day, with the Directorate of Honours and Awards assessing the eligibility of veterans who make application for the RVCN, in accordance with the eligibility criteria prescribed by the Republic of Vietnam.
4. s22 submission though, overlooked a critical point: that is, the power to determine eligibility is only to do so against the eligibility criteria prescribed by the Government of the Republic of Vietnam. The memorandum cannot be interpreted so broadly as to authorise Australia to amend the eligibility criteria of the RVCN.
5. The Chief of the Joint General Staff, Republic of Vietnam Armed Forces, also issued a similarly worded memorandum to the United States Military Assistance Command, Vietnam, on 24 March 1966.

Motivation of the former Government of the Republic of Vietnam to award the RVCN to its allies

6. It is difficult given the passage of time to comment on the motivation of the former Government of the Republic of Vietnam.
7. It is a fact that it offered the RVCN to allied countries. In doing so it prescribed the eligibility criteria under which awards of the RVCN were to be made. It entrusted those countries, including Australia, to determine individual eligibility in accordance with the criteria it prescribed as a sovereign nation.

Application of the 'end-of-war' provision

8. §22 proposal and the legal opinion of §22 place significant weight on an 'end of war' provision, which reduced the six-month qualifying period to 60 days for United States Armed Forces personnel assigned in the Republic of Vietnam on 28 January 1973.
9. The United States applies this short service provision only to personnel serving in Vietnam on 28 January 1973 until cessation of eligibility for the medal on 28 March 1973. §22 though, seeks a similar provision that can be applied to all Australian national servicemen who served in Vietnam for at least 60 days but less than 181 days, irrespective on when they served in Vietnam. National servicemen first served in Vietnam in 1966.
10. §22 misrepresent the origin of the authority which reduced the eligibility criteria to 60 days. §22 states in his submission of 1 September 2020 "The US authorities made this provision ...". Similarly, §22 states:

"The United States Government, in its 'end-of-war' arrangements for its military personnel assigned in the Republic of Vietnam on 28th January 1973, reduced the requisite period of eligible service from six months to a minimum of 60 days ..."
11. The Joint General Staff, Republic of Vietnam Armed Forces, decided to waive the six-month criterion. On 28 January 1973, by Republic of Vietnam Memorandum Number 149, the Joint General Staff, Republic of Vietnam Armed Forces, granted a special waiver to the minimum prescribed period of service for awards of the RVCM to allied personnel. This was "To stimulate and enhance morale of Free World Military Assistance Forces who have served in Vietnam during the last phase (end) of the war." [original emphasis].
12. Annex A to the Memorandum provides that the waiver of the 'minimum time' for the RVCM is two months. It states "The waiver prescribed by this Annex is not applied in a permanent manner. It is only used in the last phase (end) of the war in Vietnam." [original emphasis]
13. The date of 28 January 1973 marks the day the ceasefire negotiated under the Paris Peace Accords came into effect, leaving the United States and other countries with 60 days to withdraw their remaining military forces from Vietnam.
14. The eligibility criteria applied to awards of the RVCM are contained in the relevant regulations issued by each arm of the United States Armed Forces. For example, eligibility criteria applied to United States Army personnel is laid down in Department of the Army Regulation 600-8-22, 'Military Awards'. The latest iteration of Army Regulation 600-8-22 is dated 5 March 2019: the specified eligibility criteria for the RVCM is consistent with previous iterations of the Regulation.
15. Army Regulation 600-8-22 specifies service in the Republic of Vietnam for six months in the period 1 March 1961 to 28 March 1973, inclusive. United States personnel "assigned in the Republic of Vietnam on 28 January 1973" must have served a minimum

of 60 days in the Republic of Vietnam as of that date, or have completed a minimum of 60 days service in the Republic of Vietnam during the period from 28 January 1973 to 28 March 1973, inclusive.

16. s22 proposal seeks to have this 'end of war' provision applied to national servicemen who are not entitled to the RVCM, in a manner neither contemplated by the Government of the Republic of Vietnam, nor applied by the Government of the United States. He seeks awards of the RVCM "in a manner that is ethical, consistent, honourable and true to the spirit of the award". Acceding to s22 proposal would in fact create a situation where awards are approved in a manner inconsistent with the eligibility criteria of the RVCM. This would put Australia out of step with other countries that accepted the RVCM for their personnel.
17. The 'end of war' provision must also be seen in its historical context. At its peak in 1968-1969, the authorised strength of United States Armed Forces personnel in Vietnam was ~550,000. By November 1972, this had reduced to ~27,000 personnel as the United States Government under the Nixon Administration progressively withdrew its combat forces from Vietnam.
18. The number of Australian Defence Force personnel serving in Vietnam peaked at ~7,600 in 1969. In August 1971, Prime Minister McMahon announced his Government's decision to withdraw the Australian task force from Vietnam. The 1st Australian Task Force was withdrawn by the end of 1971, followed by logistics elements and residual combat forces in February 1972.
19. In March 1972, Headquarters Australian Force Vietnam was replaced by the Australian Army Assistance Group Vietnam, numbering ~150 soldiers, with the Australian Army Training Team Vietnam continuing in an advisory role. Soon after it was elected to power in December 1972, the Whitlam Government ordered the return of remaining Australian personnel in Vietnam. The Australian Army Training Team Vietnam departed Vietnam on 18 December 1972, as did the headquarters personnel of the Australian Army Assistance Group Vietnam. On that date the last Australian unit in Vietnam, the Australian Embassy Guard Platoon, was stood up with a strength of 25 to 30 personnel.
20. When the ceasefire came into effect on 28 January 1973, there were ~23,000 United States Armed Forces personnel in Vietnam. This compares to the small size of the Australian Embassy Guard Platoon.

Did Australia apply the two-month 'end of war' provision to Australian personnel?

21. On 13 September 2021, under MB21-001443 ([Attachment L](#)), Defence advised it was aware a similar provision was applied to the Australian Embassy Guard Platoon that remained in Vietnam during 1973. Defence undertook to conduct further research, including examining hard copy files, to verify this aspect and under what authority it was made.
22. A review of the relevant files has found that Australian *did not apply the two-month 'end of war' provision*. Rather, in 1997 it was decided that the terminal date for awards

of the RVCM to Australian personnel should be 28 March 1973, to align with the United States practice.

23. The Republic of Vietnam never established a terminal date for the RVCM: after Saigon fell in April 1975 there was no longer an opportunity for it to do so. The terminal date for awards of the RVCM to United States Armed Forces personnel is 28 March 1973, in line with the final withdrawal of those forces under the terms of the Paris Peace Accords.
24. The terminal date for awards of the RVCM to Australian personnel was established initially as 27 January 1973. This aligned with the Vietnam Medal awarded to Australian personnel under the Imperial Honours System.
25. In 1996, a Service Entitlements Anomalies Review conducted by Defence and the Department of Veterans' Affairs recommended, among other issues, that military service in Vietnam between January 1973 and April 1975 be recognised as warlike service for entitlement purposes. This recommendation was endorsed to Cabinet by the then Minister for Defence Industry, Science and Personnel.
26. Concurrently, Defence undertook a review of the medals associated with Vietnam service, when two former members of the Australian Embassy Guard Platoon requested a review of their entitlement to the RVCM.
27. The Review identified an anomaly with the terminal date for the RVCM, finding it had been set by Defence to be 27 January 1973 to align with the Vietnam Medal. This date was not set by the Government of the Republic of Vietnam as that Government ceased to exist in 1975 without declaring a terminal date for the award of the RVCM.
28. The Review took into account the terminal date set by the United States and the implication so the Paris Peace Accords. The 'Agreement to Ending the War and Restoring Peace in Vietnam' signed on 27 January 1973 provided for a ceasefire to commence on 28 January 1973; and within 60 days, the total withdrawal from Vietnam of all troops, military advisers, other military personnel and war material of the United States and those of other foreign countries allied with the Republic of Vietnam.
29. Considering these factors, it was decided that eligibility for the RVCM to Australian personnel should extend to 28 March 1973, coinciding with the end of the 60 day withdrawal period provided for in the ceasefire agreement. This also aligned Australia with United States practice.
30. The authority for this action was vested in Defence. This was endorsed by the former Interdepartmental Committee on Honours and Awards which agreed that it is the responsibility of Defence to interpret and apply the prescribed eligibility criteria established by the Government of the Republic of Vietnam.
31. The then Minister for Defence Industry, Science and Personnel was briefed on this matter and wrote to peak ex-Service organisations to advise them of the extension of the terminal date of the RVCM.

RVCM entitlements of the Australian Embassy Guard Platoon personnel

32. Analysis of the Nominal Roll of Vietnam Veterans identified 28 Australian Army personnel who served on the strength of the Australian Embassy Guard Platoon from 18 December 1972. Twenty-three of them qualified for the RVCM by completing a minimum of 181 days service in Vietnam by 27 January 1973. The other five had served in Vietnam for periods ranging from 129 days to 177 days.
33. By extending the terminal date for Australian service in Vietnam to 28 March 1973, all five members aggregated sufficient service in Vietnam to qualify for the RVCM under the six months (181 days) criterion.

The terms of enlistment and service obligations of national servicemen

34. s22 believes that the possibility national servicemen could not have completed 181 days service in Vietnam, was both obvious and foreseeable. He contends there was a dereliction of duty on the part of the Australian Government for not negotiating a criterion, with the Government of the Republic of Vietnam, in relation to national servicemen.
35. When National Service was reintroduced in 1964, the *National Service Act 1951* (as amended) provided that national servicemen were to be enlisted for a period of two years. In 1971, this was reduced to a period of 18 months.
36. Under Army policy, national servicemen serving overseas were to be returned to Australia in order to arrive in the state in which they were to be discharged, not less than four weeks before the due date of their discharge.
37. National servicemen and other personnel returned to Australia after serving in Vietnam for less than 181 days, for a variety of reasons. Examples include:
 - a. Illness. There are also cases of personnel who returned to Australia for rest and recreation but were then found to be not medically fit to return to Vietnam;
 - b. Injury that was not classified as a battle casualty;
 - c. Compassionate reasons;
 - d. The member's unit completed its intended period of deployment;
 - e. The member's unit was withdrawn from Vietnam in line with Government policy. For example, on 18 August 1971, Prime Minister McMahon announced the withdrawal of all remaining Australian combat forces from Vietnam; and
 - f. The member served the whole duration of their unit's deployment, but the unit was deployed for a period of less than 181 days.

Incorrect issue of the RVCM by the Royal Australian Navy and ineligible national servicemen

38. Your office was briefed on this aspect under MB21-001443 ([Attachment L](#)).
39. §22 submission draws attention to the former Department of the Navy incorrectly awarded the RVCM to Royal Australian Navy personnel who deployed to Vietnam in the *Charles F. Adams* guided missile destroyers HMA Ships *Brisbane*, *Hobart*, *Perth*; and the *Daring* class destroyer HMAS *Vendetta*. Between 1967 and 1971, these ships completed a total of nine deployments to Vietnam, where they conducted naval gunfire support operations with the United States Navy Seventh Fleet.
40. Defence is aware that historically, the Navy incorrectly issued the RVCM to the approximately 3000 personnel who deployed to Vietnam in these ships. The ships' companies had not met the 181 days service in Vietnam criterion, and few were subject to the short-service eligibility clauses.
41. The reason for the awarding was due to the then Department of the Navy incorrectly interpreting the eligibility criteria of the RVCM, by counting the entire period each ship was allotted for service in Vietnam as qualifying service for the medal. The period of allotment includes all transit time from Australia to the operational area of Vietnam, and return at the end of the deployment. The periods of allotted service for the nine deployments vary in duration from 204 to 222 days.
42. The period of allotment is correct for the purpose of determining eligibility to veterans' benefits and repatriation entitlements; however, for the purpose of determining eligibility to the RVCM, only service rendered in the operational area of Vietnam should have been counted as qualifying service.
43. This error was brought to the attention of the Navy in 1987. In practical terms though, the Navy completed issuing the RVCM to its personnel in 1972. The final deployment impacted by this error was that of HMAS *Brisbane* which deployed to Vietnam from March to October 1971. The RVCM was issued to the members of the deployed ship's company in June 1972.
44. In 1987, the Chief of the Defence Force and the Director General Service Personnel and Policy advised the Navy that its original interpretation of eligibility for the RVCM for these personnel was incorrect, and that they should only be awarded the medal after six months service in the operational area of Vietnam. No period on transit should be included in the calculation. Navy acknowledged this and advised that in future, award of the RVCM would occur only on the basis of service in Vietnam during a period of allotment.
45. On 13 January 1987, the Chief of the Defence Force advised, "Awards of the Medal [the RVCM] were made to and accepted by recipients in good faith. Partly for this reason, there is no suggestion that an attempt should be made to recover medals already awarded under the conditions applied by Navy. This view was reflected in [Director General Service Personnel and Policy's] advice of 15 December 1986 to the Minister."

46. The undertaking to not retrieve the incorrectly awarded medals has to date been maintained. This aspect was discussed in the first Defence Honours and Awards Appeals Tribunal Inquiry into the RVCM in 2014.
47. If an award has been inadvertently issued to a person, aside from the known Navy cases, Defence would consider it an administrative error. In the past decade, Defence is aware of at least three cases; one in each Service where the medal has been historically issued in error.

s22

Issue of the RVCM to non-combatants

49. In its original form, Article 3 of the 1 September 1965 Republic of Vietnam Directive pertaining to the award of the RVCM states:

“Allied soldiers assigned to the Republic of Vietnam after 6 months in war time with mission to assist the Vietnamese Government and the RVNAF [Republic of Vietnam Armed Forces] to fight against armed enemies, are eligible for Campaign Medal decorations; they would be awarded with Campaign Medal under conditions anticipated in Article 2 of this Directive.”

50. s22 states Article 3 means “combat forces”. He contends Australia determined eligibility to the RVCM in “absolute contradiction of the award’s fundamental purpose”, because Military Board Instruction 102-4 (‘Medals – The Vietnamese Campaign Medal’) dated 23 December 1968, allows the RVCM to be issued to members of philanthropic organisations.
51. In s22 view, philanthropic representative are “non-combatants” and “not soldiers”: by awarding the RVCM to “non-combatants”, the “demonstrates Australia’s clear power to determine eligibility for the award for Australian personnel people (sic) – if it wants to.”
52. There are a number of problems with that view. Firstly, there is an error on the part of s22 because they overlook the fact that Article 3 was amended in March 1966, several months before the Government of the Republic of Vietnam offered to award the RVCM to Australian personnel. Under the amended form of Article 3 (emphasis added):

“Foreign military personnel serving in South Vietnam for six months during wartime and those serving outside the geographic limits of South Vietnam and contributing direct combat support to the RVNAF for six months in their struggle against an armed enemy will also be eligible for the award of the campaign medal.

Foreign authorities will determine eligibility of their personnel for this award. Foreign military personnel are also entitled to this award under the special conditions provided for in Article Two of the directive.”

53. Secondly, s22 contention could apply equally to other Australian Army personnel who, because of their role or calling, are categorised as non-combatants and afforded certain protections under international law. For example, members of the Royal Australian Army Medical Corps, Royal Australian Army Nursing Corps and Royal Australian Army Chaplains Department.

Who are Philanthropic Representatives?

54. Military Board Instruction 102-4 provides that persons eligible of the RVCM are members of the Australian Military Forces and members of philanthropic organisations “who are accredited to the Australian Army and who qualify under the same conditions as Army personnel and provided they wore uniform.”
55. The Military Board Instruction is consistent with the eligibility criteria set out in the Republic of Vietnam directive. The inclusion of members of accredited philanthropic organisations as persons eligible for the RVCM does not alter the eligibility criteria of the award, nor does it establish a precedent for Australia to alter that criteria. Rather, it reflects the Australian Army has a long history of deploying accredited representatives of philanthropic organisations on operations.
56. Accredited philanthropic representatives provide welfare and other support services for Australian Defence Force personnel. They are allocated service numbers, issued a uniform and, by tradition, entitled to the same medallic entitlements as those serving on the strength of their sponsoring unit.
57. To place s22 contention in context, the Nominal Roll of Vietnam Veterans has details of 42 people who served in Vietnam with approved philanthropic organisations. Many of them served in Headquarters Australian Force Vietnam and on the strength of Australian infantry battalions.
58. The practice of issuing medallic recognition to accredited philanthropic representatives serving on duty with Australian Army units on operations dates back to the First World War. They have supported Australian personnel in World War II, Korea, the Malayan Emergency and Vietnam. More recently, philanthropic representatives have served in East Timor, Bougainville and the Solomon Islands. Long serving philanthropic representative may also be awarded the Australian Defence Medal and Defence long service awards.

Including psychological injury as a form of wounded in action

59. s22 cites the decision of the Australian Government to accept psychological injury as being ‘wounded in action’, as demonstrating “the absolute power to determine eligibility can be exercised by Australia in appropriate cases in legally valid.”

60. The first Defence Honours and Awards Appeals Tribunal Inquiry into eligibility for the RVCN recommended:

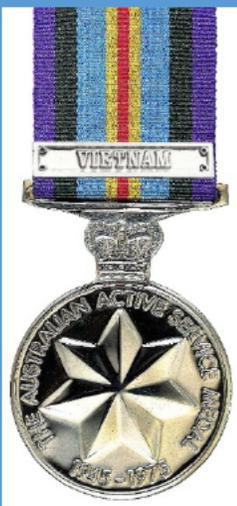
“The Department of Defence amend its interpretation of ‘wounded-in-action’ to include psychological injury under the following conditions:

- *the injury would need to be incurred as a result of enemy action;*
- *the injury would need to be noted on the member’s medical records at the time;*
and
- *the casualty would need to be evacuated from the operational theatre as a result of this particular injury.”*

61. The Government accepted this recommendation. For the purpose of assessing eligibility for the RVCN, Defence now interprets ‘wounded in action’ to include psychological injury under quite specific conditions: being incurred as a result of enemy action, being noted on the member’s service records at the time, and being evacuated as a result of that injury.

62. This action does not amend the eligibility criteria for the RVCN as prescribed by the Government of the Republic of Vietnam. It is consistent with the criterion that provides for an award of the RVCN to be made where the member is ‘wounded in action’ and evacuated.

Medallic recognition for Australian service in Vietnam



Australian Active Service Medal 1945-1975 with Clasp 'VIETNAM'

General Service Medal 1962 with Clasp 'SOUTH VIETNAM'

Vietnam Medal

Vietnam Logistic and Support Medal

Republic of Vietnam Campaign Medal

1 day service within the prescribed area of South Vietnam.

Awarded to recipients of the General Service Medal 1962 with Clasp 'SOUTH VIETNAM', the Vietnam Medal or the Vietnam Logistic and Support Medal.

Individuals are not eligible for the Australian Active Service Medal 1945-1975 with Clasp 'VIETNAM' if they received the Vietnam Logistic and Support Medal only for service at Ubon in Thailand.

30 days service, continuous or aggregated, on land or afloat on duty in the surrounding waters between 24 December 1962 and 28 May 1964.

Only awarded to eligible members of the Australian Army Training Team Vietnam.

Service between 29 May 1964 and 27 January 1973:

- 28 days service, continuous or aggregated, in ships or crafts employed in operations on inland waters or off the coast;
- 1 day or more of service on the posted strength of a unit or formation on land;
- 1 operational sortie over Vietnam or Vietnamese waters by aircrew; or
- 30 days, continuous or aggregated, for official visits, inspections or other.

1 day service in the area of operations as:

- A member of the crew of a ship or aircraft operating in support;
- While attached to a unit or organisation operating in support;
- While attached to or serving with a unit as an observer; or
- For service at Ubon in Thailand between 1965 and 1968.

Individuals are not eligible for the Vietnam Logistic and Support Medal if they have already received the Vietnam Medal.

181 days service, either continuous or aggregate, in Vietnam.

Government of Australia

- Introduced in 1998 by Letters Patent to provide Australian Government recognition of service in Vietnam.

Government of the United Kingdom

- Introduced in 1965 by Royal Warrant.
- Australia has the authority to award in accordance with the eligibility criteria.

Government of the United Kingdom

- Introduced in 1968 by Royal Warrant.
- Australia has the authority to award in accordance with the eligibility criteria.

Government of Australia

- Introduced in 1993 by Letters Patent to recognise those who had served in Vietnam for relatively short periods of time in support of Australian operations and who had not received any recognition for that service.

Government of the Republic of Vietnam

- Introduced in 1965.
- Australia has the authority to award in accordance with the eligibility criteria.