

SUBMISSION BY MORGAN BELL TO SENATE INQUIRY INTO THE INTEGRITY OF THE DEFENCE HONOURS
AND AWARDS SYSTEM.

Dear Chair,

Thank you for the opportunity to make a submission to the inquiry. For my submission I would like to provide observations and documents from my personal experience navigating the Australian honours and awards system. These will primarily be through examination of the circumstances surrounding the award of the Unit Citation for Gallantry (UCG) awarded to 1 Special Air Service Squadron (1 SAS Sqn) for service under Operation FALCONER, during the 2003 invasion of Iraq.

I was a member of 1 SAS Sqn during this operation; however, six of my colleagues and I were awarded the UCG only after 19 years of administration that culminated in bringing the matter to the Federal Court of Australia.

My submission will cover the background to the matter, the administrative processes and failings involved, actions of relevant ADF members, the effects on morale, observations on the integrity and operation of the awards system, the operation of the Defence Honours and Awards Appeals Tribunal (DHAAT), and related matters also covered by the terms of reference. As my journey involved the Federal Court of Australia this will also be covered briefly.

My Service

Between April 1987 and October 2012, I served as a soldier in the Australian Regular Army.

I started my career as an ECN 343 Rifleman within 3rd Battalion Royal Australian Regiment (PARA). My rifleman postings include the Military Training Wing of the Royal Military College, Defence Force Recruiting as a Career Advisor, and the 49th Battalion Royal Queensland Regiment. In 1996 I transferred to Royal Australian Survey Corps as a photographer and was posted to the Special Air Service Regiment (SASR). I returned to infantry in 2002 in the Quartermasters stream where I remained until discharge.

Between 1996 and 2010 I was a member of Special Operation Command (SOCOMD). My service was in a capacity that is now known as Special Forces Support Staff (SFSS). I was posted to various SFSS positions, predominantly within the SASR but also with 1 Commando Regiment (1 CDO REGT). During this period, I was awarded a Soldiers Medallion for Exemplary Service (2002), a Theatre Commander's Commendation (2007) and a Special Operations Commanders Commendation - Silver (2009) whilst serving as SFSS.

My service included operational deployments to Timor, Iraq and Afghanistan. Non-operationally, my service included a broad range of domestic activities, and international engagements in the region.

Today I maintain my connection to service through attendance at reunions, participation in veteran's activities and as the Secretary of my local Returned and Services League Sub-Branch.

Special Forces Support Staff

Whilst the definition of SFSS has varied over time, broadly SFSS are members of the ADF who have not completed the Special Forces (SF) selection course and applicable reinforcement cycle for their unit. As they are typically employed in their primary employment function, they carry out a broad range of duties. Many also have specialist skills designed to support and enhance SOCOMD's capabilities.

SFSS are an integral part of Australia's Special Operations capability and have typically made up more than 50 per cent of SOCOMD units' manning. Whilst SFSS are not 'beret qualified', it is broadly acknowledged that service in SOCOMD attracts highly motivated, deeply committed, and professional ADF members who wish to serve as SFSS. For the purposes of this inquiry, it is worth noting that this cohort has been under-represented in the Australian honours and awards system.

Australian Unit Citations

Australian Unit Citations were created in 1991 under the Australian Honours and Awards system. The relevant instruments are the *Letters Patent* of 15 January 1991, the *Unit Citations Regulation 1991*, and the *Unit Citation Determination 1991*. These instruments were amended in 2020. Under these instruments two citations were established: the **Unit Citation for Gallantry** (UCG) and the **Meritorious Unit Citation** (MUC).

1 SAS Squadron Unit Citation for Gallantry

In 2003 and 2004 I was posted to 1 SAS Sqn. During this period, the squadron deployed to the Middle East Area of Operations (MEAO) where it participated in the invasion of Iraq as a component of the Australian Special Forces Task Group, under Operation FALCONER.

As the squadron's operations are already a matter of public record, for the purposes of this submission I have not detailed them further.

In November 2003, 1 SAS Sqn was awarded the Unit Citation for Gallantry for Operation FALCONER. This award was approved by the Governor General and promulgated in Commonwealth Gazette.¹

On 1 June 2004 the insignia of the award with Federation Star was presented to the members of 1 SAS Sqn who participated in Operation FALCONER at a squadron parade. At this parade, seven members of 1 SAS Sqn who participated in Operation FALCONER were not included as recipients of the award. I was one of the seven members. Our common characteristic was that we were members of 1 SAS Sqn headquarters and would be considered SFSS in today's language.

At the time I was shocked and could not understand why some members of the squadron had been excluded.

The following week 1 SAS Sqn was formally recognised for their achievements during the 2003 Iraq deployment. The Unit Citation was bestowed by the Governor General of Australia at a very well attended Regimental parade.

Early efforts at redress

In June 2004 I took the first steps to seek a review of what I and the other members perceived as an injustice. I had become informally aware of what was referred to as 'specific eligibility criteria' being applied to limit the award of the UCG to a subset of 1 SAS Sqn members rather than all members of the sub-unit (the 'unit' for the purposes of the award).

In December 2004 I formally requested the 'specific qualifying criteria' from LTCOL Richard Burr, my then commanding officer. This request resulted in a distinctly one-way conversation with the Regimental Sergeant Major (RSM) that left me deeply upset and without the unit or Defence providing any formal justification to why some members of the squadron were being excluded from the award. The message to us was that we were not entitled; however, no evidence was provided to show how we did not meet the established eligibility criteria. I believe DH&A were first informed of the situation around this time.

I continued with my efforts to obtain the relevant documentation detailing the 'specific eligibility criteria' through requests to successive commanding officers of SASR without success. However, in 2006 my requests were escalated to Brigadier Sengelman, Deputy Commander SOCOMD (DSOCAUST). Brigadier Sengelman provided a response confirming the specific eligibility criteria existed and would stand. He referred me to the process under the *Freedom of Information Act 1992* (Cth) (FOI) as the avenue to obtain the criteria and other relevant documents.²

As a serving member of the unit awarded the citation, I was unable to obtain basic documentation relevant to the matter, and administrative paths to escalate the matter were not supported by my chain

¹ Comm Aust Gaz S423, 27 Nov 2003.

² SOHQ C919092 DSCOAUST response, 31 Oct 2006.

of command. Brigadier Sengelman's professional but disappointing response placed my colleagues and I in the same position as a member of the public requesting documents through the FOI process.

Unfortunately, these early efforts at redressing the matter were the start of a pattern of behaviour by Defence that I believe demonstrates systemic weaknesses with Defence's administration of Australian Honours and Awards.

UCG Award Criteria and Eligibility

Determining the criteria for the award emerged as a key issue in establishing the eligibility of my colleagues and I for the UCG. Whilst we could demonstrate that we were members of 1 SAS Sqn during Operation Falconer over the relevant dates, and that we served in the relevant Area of Operations (i.e., Iraq) we could not establish or obtain the criteria Defence was using to determine we were ineligible. Defence was not prepared to allow me to be privy to a document that should have been a matter of public record.

To demonstrate why this is important I will briefly detail the basis for determining the UCG's criteria. The UCG is established by the Letters Patent and supported by the Unit Citation Regulations and Determination in force at the time. The role of each instrument is (inter alia):

- **Letters Patent** – Establishes the awards under the Sovereign's authority.
- **Unit Citation Regulations** – Establishes key definitions, criteria for awarding and administering citations, and authorities for decision making.
- **Unit Citation Determination** – Establishes the citations' designs, defines entitlement to wear awards, and customs for wearing awards.

Importantly, the Unit Citation Regulations provide the following definitions for the following matters:

- **Unit**
"unit" means a unit or sub-unit of the Defence Force or of a defence force of another country.'
- **Award criteria**
'Conditions for award of citations
3. (1) The Unit Citation for Gallantry shall be awarded to a unit only for acts of extraordinary gallantry in action.'
- **Entitlement to the citation's insignia**
'Wearing of insignia
5. (1) Each person who was a member of a unit to which a citation is awarded at the time of an action, or during the period to which that citation relates, is entitled to wear the insignia of the citation on all occasions which the wearing of such insignia is customary.'

The Unit Citation Determination provides additional clarity on eligibility for the award's insignia:

'Entitlement to wear insignia

9.1 When a Unit is awarded a Citation, each person who was a member of the Unit at the time of the action for which a Citation is awarded, or during the period to which the Citation relates, is entitled to wear the Federation Star.'

These documents were publicly available to my colleagues and I, and they were supposed to act as the sole source of authority for determining eligibility. The Letters Patent, Regulations and Determination provide clear definitions establishing that a unit would be awarded a citation, and that an award was made to a unit, rather than **some** members of a unit based on criteria not defined in these authoritative documents.

Shadow Criteria for the UCG

In December 2003 the Commanding Officer of SASR (CO SASR) LTCOL Richard Burr, was quoted in *Army News*:

*"In such an operation it's impossible to recognise everyone individually and that's why we are so appreciative of the fact that the entire squadron has been recognised through the award of the [citation], because that is the only fair way to recognise a team effort."*³

Retrospectively this public statement is of great interest. Concurrent to this statement Defence was busy applying what I term shadow criteria restricting eligibility for the 1 SAS Sqn UCG. Evidence of the operation of this shadow criteria was difficult to obtain and actively concealed by relevant ADF members. Over approximately 20 years, through FOI applications, archive references from supportive ADF members, and legal proceedings I was able to key obtain documents that demonstrate the operation of shadow criteria. These include:

- A brief to CDF titled 'Eligibility Criteria for The Award of Unit Citations' prepared by Brigadier D.S.M Roche in December 2003.⁴ It provides the first documented reference to the 'specific eligibility criteria'. Please note I have supplied an **unsigned** copy.
- A brief prepared by LTCOL Burr titled 'Eligibility Criteria for the Award (sic) of the Unit Citation for Gallantry, Operation FALCONER 2003'.⁵ This brief provides subjective justification for an alternate and specific eligibility criteria, one to be applied retrospectively, and one that differed from that established by the official requirements. Please note I have supplied an **unsigned** copy.
- Brigadier Sengelman's letter dated 31 October 2006.⁶

Formalising Requests for Eligibility Criteria

In 2010 I contacted the Directorate of Honours and Awards (DH&A) seeking their advice regarding the situation. The DH&A provided very little information to validate the introduction of specific eligibility criteria and did not continue the matter. They stated they had been advised by SOCOMD that I should discuss my concerns with my Chain of Command or RSM and ask them for reconsideration before a SOCOMD convened review board.⁷

In November 2011 I was informed by an ADF member that SOCOMD had conducted an internal review of my continued requests for an explanation in April 2011. During this review I was not asked to provide a statement, to appear, or to detail my concerns. I requested an update and received a letter from the SOCOMD Honours, Awards, Recognition and Decorations (HARD) Board confirming they had reviewed the matter and determined I was not eligible.⁸ Importantly it explained that they had considered the:

'[A]pproved nominal roll, deployment dates and the eligibility criteria for the award of the UCG for Operation FALCONER as issued by the then Commanding Officer, Special Air Service Regiment, Lieutenant Colonel Rick Burr.'

The letter also stated that *'The citation was awarded to TE633.3.1.1 in Western Iraq 19 March 2003 to 30 April 2003.'*, and that *'The intent of the eligibility criteria for the UCG was for it to go to those members of TE633.3.1 who were engaged in the combat operations phase up until 11 April 2003.'* The HARD's letter was instructive. It showed that a shadow criteria was being applied, known as the 'specific eligibility criteria', and its function was to restrict the award to a subset of 1 SAS Sqn, specifically TE 633.3.1.1.

³ *Army News*, 04 December 2003, Battle Honours *Unit Citation for 1 SAS Sqn, Heroism in Iraq wins unique award for SASR*.

⁴ Eligibility Criteria for The Award of Unit Citations.

⁵ Eligibility Criteria for the Award of the Unit Citation for Gallantry, Operation FALCONER 2003.

⁶ As per footnote 2 - SOHQ C919092 DSOCAUST response, 31 Oct 2006.

⁷ FW: UCG for Delta Company 6RAR [SEC=UNCLASSIFIED].

⁸ AM739130 6 AM739130 ELIGIBILITY FOR THE UNIT CITATION FOR GALLANTRY HARD Determination by SOCOMD 31 Oct 2011

This was very disappointing. SOCOMD appeared unaware that the letter contained contradictory reasoning over the 'unit', i.e., was it 1 SAS Sqn or TE 633.3.1.1, and the relevant dates.

Ministerial Letters

Over the next couple of years my motivation waned, and I did little to pursue the matter apart from some further correspondence with former peers who had moved into more senior ADF positions. The matter was never far from mind, and it continued to cause me considerable disquiet. I now understand that I was suffering from a moral injury, one that persists to this day.

In May 2020 I wrote to the Minister for Defence, then Senator Linda Reynolds CSC, requesting that she direct the DHAAT to investigate the circumstances that resulted in seven members being excluded from award of the UCG. I was notified in August 2020 that this request was not supported.⁹

In December 2020 I received a letter from Brigadier David Kelly CSC, Chief of Staff, Army Headquarters, informing me that I had no grounds for appeal and the matter was finalised.¹⁰

Freedom of Information Requests – Defence Retaliates

By 2020 I was frustrated with the lack of transparency and due process that had surround the matter for over 16 years. The ministerial refusal led me to submit a FOI request that month (August 2020) to better understand how the decision was reached, and what was underpinning the criteria being applied by Defence in their decision making.

In early-September 2020 the FOI request was released and revealed some interesting facts. The background brief (presumably prepared for the Hon Darren Chester MP, Minister for Defence Personnel) showed two matters that were of particular interest:

'However, Defence holds CLASSIFIED records which are not for public release of a comprehensive narrative and the definitive eligibility requirements for this award.'

'An Inquiry provides an opportunity to explore complex matters in depth and to give resolution to longstanding issues. Defence does not consider that an Inquiry into this matter is warranted as the basis of Mr Bell's request is a simple misunderstanding of the award eligibility criteria.'

This provided me with the certainty that Defence was aware the shadow criteria was being applied and at the same time opposed both transparency and an independent review of the matter.

In parallel I had also contacted the DHAAT directly to engage them and, hopefully, generate enough interest for them to initiate a merit review of the circumstances.

In early-September 2020, SOCOMD referred me for investigation to the Australian Defence Force Investigative Service (ADFIS), the Inspector-General of the ADF (IGADF), the Joint Military Police Unit (JMPU) and the Australian Federal Police (AFP) for the alleged retention and release of classified material. I was cleared of any wrongdoing in January 2022 after a period of considerable stress on myself and my family.

I have no doubt that this vexatious referral was directly connected to my correspondence with the Minister and my FOI requests. At face value it appeared to be an intimidation tactic and intended to present me in an unfavourable light to the DHAAT.

General Angus Campbell, Lieutenant General Burr & the DHAAT

Around this time the DHAAT contacted the Chief of the Defence Force, General Angus Campbell over the matter of the 1 SAS Sqn UCG. My persistent requests for a fair hearing were raised with General Campbell and he suggested that the Chief of Army, by then Lieutenant General Burr, meet with members of the DHAAT to discuss the matter. Such a meeting was arranged and conducted.

⁹ MC20-001859 Morgan Bell 31 Jul 2020.

¹⁰ File Reference MC20-003423.

In my opinion, the purpose of the meeting was to dissuade DHAAT from investigating the matter. If this is correct it represents a blatant attempt to improperly influence a tribunal with considerable authority and responsibility. Whilst I do not have direct evidence of the conversations that occurred, the subsequent correspondence paints a discouraging portrait of my character.¹¹

I firmly believe that there was collusion between Lieutenant General Burr and members of the DHAAT in 2020 to ensure an independent review of the matter would never occur, likely because it would illuminate decisions that would not withstand independent scrutiny.

With a change of Minister for Defence, I again requested a referral to the DHAAT, initially in September 2021 again in November 2021, and finally in late March 2022. Whilst awaiting an answer I submitted a further FOI request to get a clearer picture of what was happening behind the scenes.

With the 2022 federal election caretaker period commencing, my requests were closed by the Ministerial, Parliamentary and Cabinet Branch. The correspondence informing that the matter was closed relied upon the same 'specific eligibility criteria' justification. At this point 18 years had passed. Throughout this period, I maintained that The Regulations and Determination were the primary documents establishing criteria for award of the UCG and these had been at best ignored.

What was more concerning was the growing body of evidence that senior Australian Defence Force officers were actively and inappropriately seeking to prevent my requests for transparency, release of documents under the FOI system, and an independent review of the matter progressing.

Federal Court Application

In May 2022 I commenced Federal Court action by way of an Administrative Decision – Judicial Review (AD(JR)). I was seeking an order that Defence refer the matter to the DHAAT for formal inquiry.¹²

The Department of Defence was represented by the legal practitioners of the Australian Government Solicitor (AGS) and I self-represented. Between May 2022 and April 2023, the AGS sought to have the matter dismissed, including summarily.

The Federal Court allowed the case to proceed, and mediation was scheduled. After Defence failed to provide the correct respondent, the Court named the Secretary of the Department of Defence as the first respondent. From this point onwards it was very apparent that things had changed. In essence, once the Secretary was joined to legal proceedings, control over the matter had been taken from the senior Australian Defence Force officers involved and an independent lens was applied.

On Friday 21 April 2023 the Department of Defence notified me that my six colleagues and I had been awarded the UCG. To put this into perspective, Friday 21 April 2023 was **20 years and one month** after the invasion of Iraq.

Later, when I asked for an explanation the AGS stated:

*'During the course of these proceedings Defence gave further consideration to the interpretation of the Unit Citation Regulations 1991, and the nomination and award of "1 Special Air Service Squadron". In so doing, Defence formed the view that the Governor-General awarded the UCG to the whole of 1 Special Air Service Squadron.'*¹³

Australia Post presented my Insignia of the Citation on Monday 24 April 2023.

I would like to acknowledge the prompt administration by the DH&A that made the award available in time for Anzac Day 2023. I would also like to note that to date only one of my colleagues has been formally presented their insignia.

¹¹ File Reference DGAPC/2020/BQ16636822.

¹² File Reference NSD397-2022.

¹³ AGS email 8 May 2023.

Lack of Accountability and the Effects on Morale

Whilst there are gaps in the chain of events, and documentation I have not been able to obtain, from what I have presented it is clear that Defence's handling of this matter was at best unsatisfactory.

More importantly, it is clear that senior ADF members' behaviour was directly responsible for the 20-year delay for my colleagues and I to be awarded the UCG. Since the matter was resolved, the ADF has provided no explanation, no apology, and it has exercised no accountability for the behaviour or the systemic process and leadership failings.

This is important because it did not involve a small group of diggers colluding at the unit boozier for a brief period. It involved the Chief of the Defence Force and the Chief of Army. It took legal action at the Federal Court of Australia and removing the matter from the control of senior ADF officers for it to be effectively reviewed. By any objective measure this is a gross failing.

After the decision, I approached SOCOMD requesting a formal presentation to my colleagues and I. Initially my request was given consideration, this was later walked back. There have been more recent opportunities to formally present the insignia to our group that have gone begging. All these represent missed opportunities to remedy the damage this caused to our small group.

I was not the only member of our group to suffer from a moral injury from the events detailed above. The majority of our group remain embittered by the experience, the long overdue recognition of their contributions and the lack of accountability.

The decision to withhold the award was a significant factor in at least four of us deciding to discharge from the army. This highlights the toxic effect of deliberate mishandling, obfuscation and limited oversight has in a microcosm.

In short, mishandled honours and awards destroy morale.

'In Action' vs 'Warlike Service'

In my opinion, the term 'In Action' as it relates to Australian Honours and Awards system has been distorted through successive amendments to award criteria. At the very least these have introduced a widely held perception that award criteria were being manipulated to benefit senior ADF officers.

Whether this is true or not should not take away from the fact awards have been changed to have differing criteria to those at their establishment. For example, the 2020 amendments to the Unit Citation Regulations updated 'In Action':

"in action" means the physical involvement of members of a unit of the Defence Force as a part of a force engaged in conflict with an opposing force;

This is contrasted with the criteria updated in the Distinguished Service Cross Regulations (Amendment) 2011 that removed 'In Action' and replaced it with 'Warlike Service'.

The Inquiry is well positioned to consider the consistency needed across awards.

Opportunities to Address Systemic failures in Defence's administration of Australian Honours and Award

Despite the challenges I went through, this matter does provide an opportunity to identify and analyse failures and weaknesses in Defence's processes for administering Australian Honours and Awards. My observations include:

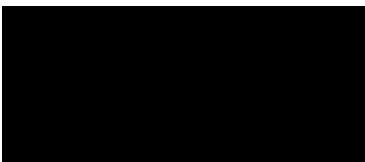
- A high-degree of deference was given to the accuracy and consistency of units' interpretation of award criteria and their administration of awards without an adequate oversight function. This could have been provided by centralised or specialist honours and awards functions within the ADF and Defence.
- Defence did not apply an effective mechanism to audit or assure the administration of awards, e.g., verifying the accuracy of Operational Manning Documents and the application of award criteria to determine eligibility. This included once formal requests for review were received.

- The ADF and Defence administrative redress mechanisms were inadequate to gain transparency or trigger an independent evaluation of an award request.
- The FOI process was inadequate to provide transparency of Defence's administration of Australian Honours and Awards.
- Retrospective 'specific eligibility criteria' was applied to the 1 SAS Sqn UCG based on an interpretation that differs from that established by the Letters Patent, the Unit Citations Regulations, and the Operation FALCONER award citation. The 'specific eligibility criteria' functioned as shadow criteria that was established and applied to limit eligibility to some but not all members of 1 SAS Sqn, the unit awarded the UCG.
- A small number of ADF members were able to sufficiently influence the operation of Defence's honours and awards system to prevent an independent review through available mechanisms, and to block administrative redress mechanisms.
- A culture of impunity existed amongst a group of Australian Defence Force officers towards transparency and due process towards award of the 1 SAS Sqn UCG.
- The DHAAT's independence from the Australian Defence Force was unlikely to be sufficient to prevent senior ADF officers attempting to influence its operation and matters it reviews.
- The DHAAT's jurisdiction over a 'reviewable decision' under s 110v of the *Defence Act 1903* (Cth) did not extend towards the UCG as it is not listed as a 'Defence Honour' in the *Defence Regulation 2016* (Cth). Consequently, the DHAAT could only review the matter if the Minister directed the Tribunal under s 110W.

I believe these observations are indicative of systemic failings. The specific recommendations I would like to provide to the Inquiry are:

- Introducing greater transparency to Defence's administration of honours and awards will only assist in improving confidence the Australian Honours and Awards system is operating as intended.
- The creation of a positive duty for Defence to verify awards have been administered correctly would have prevented many of the failings in this matter and would encourage a normative effect amongst ADF members to act professionally and transparently.
- The DHAAT's reviewable decision jurisdiction can be updated to include unit citations (and other awards not currently included).
- Definitions of 'in action' can be reviewed and harmonised across awards to clearly distinguish awards related to combat operations and to restore confidence in the Australian Honours and Awards System.
- Introduction Meritorious Service Decorations, as suggested by The Hon Dr Mike Kelly, could assist in more clearly distinguishing awards related to service in combat operations or warlike theatres.

Sincerely,



Morgan Bell

29 August 2024