

CHAPTER ELEVEN

GUNNER ALBERT NEIL (NEALE) CLEARY

11-1 Gunner Albert Neil Cleary (known as Neil or Neale) was born in Geelong on 16 June 1922.¹ He joined the Citizen Military Forces (CMF) on 11 June 1940, stating that he was a labourer and unmarried. After serving 315 days in the CMF he was discharged in order to join the Second Australian Imperial Force on 22 April 1941.

11-2 During Cleary's early period of service with the CMF, he was absent without leave on a number of occasions. On one occasion, in April 1941, he was absent for a week, and was punished with five days' detention. While serving with the 2/2nd Field Regiment he was again absent without leave in June 1941. In August, now a reinforcement for the 4th Anti-Tank Regiment, and en route to Singapore, he was absent for four days from a transport ship docked at Fremantle. He was given 28 days' detention, which he served in Western Australia. At about the same time he was admonished for 'conduct to prejudice of good order and military discipline' and fined for insubordinate language.² On release from detention he was absent without leave twice more before sailing to Singapore, where he arrived in October 1941.



Gunner Albert Neil (Neale) Cleary

11-3 Cleary was transferred from the 4th Anti-Tank Regiment to the 2/15th Field Regiment on 17 January 1942. That regiment had gone into action two days earlier, and Cleary was probably sent to it as a replacement for casualties. The 2/15th Field Regiment was captured when Singapore surrendered to the Japanese on 15 February 1942. The Australian 8th Division, including the 2/15th Field Regiment, was imprisoned at Selerang Barracks, Changi.

11-4 From May 1942 the Japanese began sending groups of prisoners of war (POWs) for labouring work elsewhere in Asia and the Pacific. In July, a detachment of 103 members of the 2/15th, including Cleary, was sent to Sandakan, Borneo, where they constructed an airfield along with about 2,500 other British and Australian POWs.³ Cleary was one of the 101 members of the 2/15th Regiment sent to Sandakan who did not survive. He died on 20 March 1945 at Ranau.⁴

Recognition for service

11-5 For his Army service, Gunner Cleary was entitled to the following Defence honours and awards:

- Commendation for Gallantry (Australian, 2010)

1 Letter, Ms Sharon Perera, Registry of Births, Deaths and Marriages, Victoria, BC/12/16607, 17 July 2012.

2 AN Cleary, service record, NAA: B883, VX52128.

3 Cliff Whitelocke, *Gunners in the jungle, a story of the 2/15th Regiment*, Royal Australian Artillery, 8th Division, Australian Imperial Force, 2/15th Field Regiment Association, Eastwood, NSW, 1983, p. 173.

4 Whitelocke, *Gunners in the jungle*, p. 172.

- 1939–1945 Star
- Pacific Star
- War Medal 1939–1945
- Australia Service Medal 1939–1945.

What has led to the review?

- 11-6 While the family of the late Gunner Cleary had not sought this review, his name was included as one of a small group of servicemen, which a number of senators and members had strongly represented to the government in 2001 as being servicemen who should belatedly receive the Victoria Cross (VC).
- 11-7 On 4 April 2001, the Shadow Minister for Veterans' Affairs, Senator Chris Schacht (ALP, South Australia), introduced the Award of Victoria Cross for Australia Bill 2001, to award posthumously the VC for Australia to three deceased Australian servicemen, namely Private John Simpson Kirkpatrick, Gunner Albert Cleary and Ordinary Seaman Edward 'Teddy' Sheean, for their actions in the First and Second World Wars.⁵ Schacht stated that there was 'widespread support in both the veterans' and the wider community for the awarding of the posthumous VCs to three ordinary but very great Australian heroes'.
- 11-8 Further, on 1 June 2001, Mr Sid Sidebottom, MP (ALP Member for Braddon), introduced the Defence Act Amendment (Victoria Cross) Bill 2001, which also outlined the case for awards to Simpson, Cleary and Sheean, stating that it was supported by the Member for Corio (The Hon. Gavan O'Connor, MP). The issue was included by the then Opposition Leader, The Hon. Kim Beazley, MP, in the party platform in the 2001 general election.⁶ The Coalition won the election, and the matter of awarding the VC for Australia through an Act of Parliament was not pursued further.
- 11-9 The inclusion of Cleary in this Inquiry formally commenced on 19 October 2010 during an estimates hearing of the Senate Standing Committee on Foreign Affairs, Defence and Trade. A member of the committee, Senator Guy Barnett (Liberal, Tasmania), named Cleary among six candidates he put forward for consideration of the award of the VC.⁷ Consequently Cleary's name was included by the Parliamentary Secretary for Defence on the list directed in the Terms of Reference to this Inquiry.

Submissions

- 11-10 The Tribunal received 14 written submissions that included reference to Gunner Cleary. Six submitters also made reference to Gunner Cleary in oral submissions.

⁵ CPD, Senate, 4 April 2001, pp. 23696–23699 (Chris Schacht).

⁶ Australian Labor Party, 'Labor to award the Victoria Cross of Australia to three war heroes', media release, 26 October 2001.

⁷ Senate Foreign Affairs, Defence and Trade Legislation Committee, Supplementary budget estimates, 19 October 2010, pp. 106–109.

Written submissions

- a. Submission 70, 70A, 70B and 70C — Mrs Lynette Silver (against)
- b. Submission 77 — Ms Pamela Herrick (against)
- c. Submission 98 — Ms Di Elliott (against)
- d. Submission 99 — Mr Graham Wilson (against)
- e. Submission 109 — Mrs Lorna Wilson (for)
- f. Submission 123 — Mr Richard Pelvin (against)
- g. Submission 128 and 128A — The Hon. Sid Sidebottom, MP (for)
- h. Submission 173 — Dr Peter Stanley (against)
- i. Submission 193 — Mr Chris Schacht (former senator) (for)
- j. Submission 249 — Mr John Bradford (in support of the previously awarded Commendation for Gallantry).

Oral submissions

- a. Mr Graham Wilson — Public Hearing Canberra— 1 December 2011 (against)
- b. Mr Richard Pelvin — Public Hearing Canberra— 2 December 2011 (against)
- c. Mrs Lorna Wilson — Public Hearing Melbourne— 14 December 2011 (for)
- d. The Hon. Sid Sidebottom, MP — Public Hearing Launceston— 16 December 2011 (for)
- e. Mrs Lynette Silver — Public Hearing Canberra— 14 March 2012 (against)
- f. Mr Chris Schacht (former Senator) — Public Hearing Canberra— 14 March 2012 (for).

Background to Sandakan–Ranau prisoner of war camps

- 11-11 From 1942 until the last quarter of 1943, conditions for Allied POWs at Sandakan were at first no worse than for those in other camps in South-East Asia. Prisoners were forced to work 10 hour days, given insufficient food and medical attention, were often beaten, and occasionally died as a result. Private Keith Botterill, who claimed to witness the death of Cleary, stated that the first year at Sandakan was relatively easy compared to later, and that few prisoners died.⁸
- 11-12 After a change in the guard unit and the removal of almost all of the Allied POW officers to Kuching by October 1943, conditions deteriorated. Of 1,787 Australians and 641 British prisoners at Sandakan at that time, 600 had died by January 1945.⁹

⁸ Richard Reid, *Sandakan 1942–1945*, Department of Veterans' Affairs, Canberra, 2008, p. 8.

⁹ Lynette Ramsay Silver, *Sandakan — a conspiracy of silence*, Sally Milner Publishing, Burra Creek, NSW 1999, p. 359. Note: slightly different numbers appear in Lionel Wigmore, *The Japanese thrust: Australia in the war 1939–45*, Australian War Memorial, Canberra, 1957, p. 456.

- 11-13 The Japanese airfield was rendered inoperable by Allied air raids late in 1944 and early 1945 and the Japanese, fearing an Allied landing, evacuated Sandakan, taking the prisoners inland to Ranau, over 200 kilometres to the west.
- 11-14 The Sandakan death marches, as they are known, took place from January to June 1945. Of 265 POWs who began the first of five marches, 70 failed to complete the journey.¹⁰ Those who arrived were starved and mistreated, and bashed to death in some instances. By 1 April, two-thirds of those who had begun the marches, including Cleary, were dead.¹¹ By the end of the war, from the 2,428 men who had been alive in October 1943, only 6 men (including Private Botterill) survived — all by making successful escapes.

Description of action under consideration

- 11-15 According to Keith Botterill, Cleary survived the first march from Sandakan to Ranau, and in March 1945 he and a mate, Gunner Wally Crease, escaped from the camp at Ranau. Cleary was recaptured and brought back to the camp where he was thrown into an empty area known as the 'guard house'. Already showing signs of beatings, his arms were tied high up behind his back and he was made to kneel with a log tied behind his knees. Two guards kicked and punched him all over his body, including his neck, and they caused further pain by jumping on the end of the log tied behind his knees. Every half-hour he was made to stand up. During the next three and a half hours, Cleary was beaten with rifle butts, sticks and anything else to hand.
- 11-16 The beatings of Cleary continued the next day. When Crease, the other escapee, was recaptured and returned to camp, both men were given the same treatment all that afternoon. The bashings continued throughout the night. Crease managed to escape again the next morning but the Japanese guards found him and shot him.
- 11-17 Cleary was still alive four days later, by which time he had been tied to a tree by his neck and was dressed only in a 'fundoshi', a small piece of cloth given to the POWs to cover their private parts. Cleary was by then suffering from dysentery and had been left to die in his own excrement. His captors continued to hit him with their fists and rifles. He remained in this condition for 11 or 12 days, until his guards could see he was dying. Finally, his friends were allowed to lift him up, wash him and take him away to die.¹²
- 11-18 On 21 May 1946 the Australian Military Court sitting in Rabaul, Territory of New Guinea, convened under the *War Crimes Act 1946* (Cwlth) convicted three former Japanese guards of murdering Cleary, essentially on the evidence of Private Botterill.¹³

¹⁰ Silver, *Sandakan — a conspiracy of silence*, p. 196.

¹¹ *ibid.*, p. 205.

¹² 'Botterill Statement', AWM54 1010/4/17; see also Peter Firkins, *From hell to eternity*, Westward Ho Publishing, Perth, 1979, p. 117; Reid, *Sandakan 1942-1945*, pp. 40-41; and Silver, *Sandakan — a conspiracy of silence*, pp. 198-201.

¹³ 'Record of the Judgments of the Military Court', NAA: A471 81213 (filed in the Attorney General's Department no. 812313).

Chain of command for honours and awards

- 11-19 Because Cleary was a POW, he was no longer under the chain of command of his original military unit. If he were to be considered for an honour or an award he needed to have been considered, including by the Australian military authorities, in accordance with the provisions of a memorandum of 10 November 1943 from the Imperial Prisoners of War Committee in London, which had been adopted by Australia following consideration by the Defence Committee in February 1944 (see paragraphs 4-66 to 4-77 of the Report).
- 11-20 In accordance with these procedures (much of the coordination and vetting took place in London), recommendations for honours (including the Mention in Despatches [MID]) could be made for Australian POWs who were killed attempting to escape or who were executed after being recaptured. For this to happen, the British and Australian authorities had to determine, among other things, that the particular individual was blameless for their original capture and that they had shown the requisite standards of service/gallantry while in, and escaping from, captivity.
- 11-21 Although the names of a number of Australian servicemen killed by their captors in the Far East while trying to escape or following their recapture were assembled into a nominal roll in 1945–1947 for consideration in accordance with this policy, it would seem that only three MID's were awarded. Cleary was never recommended, and the three who did receive awards were from the nominal roll of 21.¹⁴
- 11-22 Gunner Cleary had not received any honour by the time of the British cut-off for the making of Second World War recommendations in 1952. There are no records that shed any light on the question of whether a recommendation for Cleary was or was not put forward in the period 1945–1947. However, in 2010, in response to a submission from Mr John Bradford of Adelaide to the Defence Honours and Awards Tribunal's (the old tribunal) Inquiry into Recognition for Far East Prisoners of War Who Were Killed While Escaping, the old tribunal recommended that Cleary be awarded posthumously a Commendation for Gallantry.¹⁵ The old tribunal considered that this was a belated award that, apart from what was determined at the time to be a process failure, should have been made in an End of War List.
- 11-23 As the Tribunal has stated in this Report, it is now clear that honours for POWs in the Second World War were discretionary, and so the effect of what the old tribunal did was to undertake a merits review in recommending Cleary for a Commendation for Gallantry, although this was not its intention.
- 11-24 Mrs Silver has said in her written and oral submissions to the Inquiry that while she had, at Mr Bradford's request, provided him with Cleary's name, she had warned against proposing that Cleary receive a belated honour because, on the basis of Mr Botterill's confession to her, Cleary had not been killed but had died like so many other prisoners from disease and maltreatment. Mrs Silver stated that Mr Botterill had told her and personal friend Mrs Maureen Devereaux that he and Private Moxham (one of the other survivors) had fabricated their testimony

¹⁴ Posthumous MID for prisoners of war killed whilst attempting to escape. AWM119, 122.

¹⁵ Defence Honours and Awards Tribunal, *Inquiry into recognition for Far East prisoners of war who were killed while escaping*, Defence Honours and Awards Tribunal, Canberra, 2010.

to the War Crimes Court in Rabaul in 1945 that convicted three Japanese of murdering Gunner Cleary.¹⁶ The Tribunal accepts that, on the best reading of the available information, including everything that has been provided by Mrs Silver, there remain ambiguities and contradictions in the statements made by Mr Botterill. The Tribunal believes that it is not possible now to be certain of the events surrounding Gunner Cleary's death. The War Crimes Court decision in 1945 that he was murdered still stands.

Arguments put forward in submissions for and against the award of the Victoria Cross or other recognition for Cleary

Arguments put forward for the award

- 11-25 In the Senate on 4 April 2001 Senator Schacht stated, 'The courage displayed by Gunner Cleary in his attempt to escape and throughout the subsequent ordeal was an inspiration to those with whom he was imprisoned'.¹⁷ Mr Schacht reiterated this view in his written and oral submissions to the Tribunal.¹⁸
- 11-26 In addition to mentioning Cleary's courage, Mr Sidebottom stated in the House of Representatives on 4 June 2001 that because 'little was done at the administrative level to formally recognise the ordeal and actions of POWs, particularly those trying to escape', the award of the VC for Australia to Cleary 'would add honour to the memory of the 1,700 POWs who died in Borneo at the hands of the Japanese'.¹⁹ Mr Sidebottom reiterated these sentiments in his oral submission to the Tribunal in Launceston on 16 December 2011.²⁰
- 11-27 In her written and oral submissions to the Tribunal, Mrs Lorna Wilson, Cleary's sister, indicated that, although her family had known nothing of his experiences at the hands of the Japanese until 1988 when publicity was given to a monument erected at the spot where he had been chained to a tree, she was happy to give her full support to further recognition being given to her late brother's actions at Ranau.²¹
- 11-28 In the past 10 years, Cleary's experience has often been mentioned on websites about Australian prisoners in the Second World War.²² Cleary is mentioned in many of the books on the subject of POW camps in Borneo, though all the information seems to derive from Mr Botterill, who had been interviewed many times in the intervening years.

16 Oral submission, Public Hearing Canberra, 14 March 2012, and Submission 70: Ms Lynette Silver.

17 *CPD*, Senate, 4 April 2001, p. 23698 (Chris Schacht).

18 Oral submission, Public Hearing Canberra, 14 March 2012 and Submission 193: Mr Chris Schacht.

19 *CPD*, H of R, 4 June 2001, p. 2712.

20 Oral submission by The Hon. Sid Sidebottom, MP, Public Hearing Launceston, 16 December 2011.

21 Oral submission, Public Hearing Canberra, 14 December 2011 and Submission 109: Mrs Lorna Wilson.

22 Department of Veterans' Affairs (DVA), 'Gunner Cleary', DVA, www.vva.gov.au/behindwire/cleary.html, viewed 1 December 2011.

Arguments put forward against the award

- 11-29 In her book,²³ and in her written and oral submissions to the Inquiry, Mrs Silver stated that, in her view, Cleary was not executed, although he was clearly treated in a barbaric manner, but died of illness. She indicated at the oral hearing in Canberra on 14 March 2012 that she considered 'execution' for the purposes of the POW honours policy to be limited to killing by beheading, bayoneting, and hanging, but not death resulting from a course of conduct by guards such as torture, starvation, exposure to the elements and refusal to provide medical treatment, which Cleary was alleged to have suffered.
- 11-30 Mrs Silver also says that the story about Cleary's ill treatment is based on the evidence of one survivor, the late Mr Botterill, who later confessed to her and Mrs Devereaux that he lied under oath in order to secure a conviction against three guards in the Rabaul Military Court in 1946.²⁴ Mrs Silver said that Mr Botterill's confession had been made to her after she confronted him with a number of discrepancies between his statement to the Rabaul court and what he had told her about his days away from Ranau on rice-carrying parties. Mrs Silver said Mr Botterill conceded that he had not been at Ranau on a number of the days he said he had witnessed particular acts of torture being inflicted on Cleary. She said that in his Rabaul statement, he changed the dates of Cleary's escape, recapture and death, and as a consequence this exaggerated the timeframe of Cleary's suffering, including the time he was tethered to the tree. But at the end of her oral testimony, Mrs Silver said that, after her long conversations with Mr Botterill and the clarification by him of his movements around the date of Cleary's death, she did believe Mr Botterill's overall account of Cleary's treatment, despite the additions made by Mr Botterill and also by Mr Moxham in their Rabaul statements with the aim of ensuring that the three Japanese guards were convicted of murder by the court.
- 11-31 In her written and oral submissions to the Tribunal, Mrs Silver reiterated her view that Cleary was ineligible for any award and that the old tribunal was wrong when, as an administratively established body, it had recommended him for the Commendation for Gallantry in April 2010.
- 11-32 This recommendation for a posthumous Commendation for Gallantry to Cleary by the old tribunal in its *Report on the inquiry into recognition for Far East prisoners of war who were killed while escaping* was made on the basis of records held in the Australian War Memorial. These, however, did not include any documents indicating that the Australian or British authorities had ever in the period 1945–1947 considered Cleary for a gallantry honour.
- 11-33 In his book on Sandakan, Dr Richard Reid notes that:
- The tragedy of Sandakan is the tragedy of hundreds of individual Australian and British POWs. So much violence of one kind or another — starvation rations, withholding of medical supplies, bashings and other forms of physical abuse — were visited upon the Sandakan POWs that it seems inappropriate to single out the story of one man. However, what happened to Gunner Albert Cleary ... was of

²³ Silver, *Sandakan — a conspiracy of silence*, pp. 199–201.

²⁴ Mrs Lynette Silver, Submission 70.

a special horror. Cleary's story can stand as emblematic of the general brutality and complete lack of compassion experienced by each and every prisoner.²⁵

11-34 Cleary's death, as Reid states, was not exceptional, and is only known because, unlike the hundreds of other Australians who were killed by their Japanese guards in Borneo, witnesses survived to state what they had seen happen to him. In the official history chapter on POW camps in Borneo, over 30 prisoner's names are mentioned, but not Cleary's.²⁶ Cleary only came to prominence in 1985, when the site where he was chained was identified, and a memorial erected there.²⁷ It states:

On this actual spot, VX 52128 Gunner Albert Neil Cleary, 2/15 th Field Regiment, Royal Australian Artillery, was chained to a stake and beaten and starved for 11 days before he finally died on 20th March 1945, aged 22 years.

11-35 Dr Reid's assessment is very similar to that put to the Tribunal by Mrs Silver.

11-36 Mr Graham Wilson, in his submission, summed up his views by recommending:

that no action be taken to recognise Gunner Albert Neal (sic) Cleary by award of any decoration or any form of tangible recognition (i.e. MID) from either the Imperial or Australian honours and awards systems (noting again, of course, that the Tribunal has already done so in quite improperly 'awarding' a posthumous Commendation for Gallantry to Gunner Cleary).²⁸

11-37 Mr Wilson considered that, on the records available, the actions of Private Murray at Ranau in stealing food to feed sick prisoners and to build a cache to support an escape were more worthy of recognition than anything that Cleary had done in escaping. Mr Wilson noted that Private Murray had been a close friend of Mr Botterill, who had also attested to his actions in the camp.

11-38 Dr Peter Stanley in his submission to the Tribunal concluded that 'I am uncertain why this [Cleary's] case should be reopened'.²⁹

Tribunal consideration of the process

11-39 The Tribunal has not found through its process review, nor did the old tribunal when it conducted its Inquiry into Recognition for Far East Prisoners of War Who Were Killed While Escaping, any documents that indicated that the relevant British and Australian authorities in the period 1945–1947 had considered Cleary for an honour. The Tribunal has also found no evidence that the nomination and recommendation processes followed at the time by the Australian Army were inconsistent with those for considering awards to former prisoners of war by the British and other Allied governments using the Imperial honours system. These were discretionary at all times.³⁰

25 Reid, *Sandakan 1942–1945*, p. 40.

26 Wigmore, *The Japanese thrust*, pp. 593–604.

27 Kevin Smith, *Borneo, Australia's proud but tragic heritage*, Kevin R Smith, Armidale, 1999, p. 159.

28 Mr Graham Wilson, Submission 99.

29 Response from Dr Peter Stanley, 26 January 2012.

30 Defence submission to the Inquiry into Recognition for Far East Prisoners of War Who Were Killed While Escaping, received under cover of VCDF/OUT/2009/470 dated 23 July 2009.

Tribunal review of the merits of the case

- 11-40 A summary of the eligibility conditions for each of the Imperial and Australian (operational or non-operational) honours, for which Cleary (posthumously) could now be considered, are listed in Appendix 6 of the Report.
- 11-41 To be eligible for consideration for award of the VC in 1945, Cleary would, under the relevant Army Orders, have required three witnesses to attest that he had carried out an act of the 'most conspicuous bravery or some daring or pre-eminent act of valour or self-sacrifice or extreme devotion to duty in the presence of the enemy'.
- 11-42 No person has, however, been awarded the VC for bravery while a prisoner of war, as actions carried out by servicemen in captivity are not considered to be 'in the presence of the enemy' in the sense of being in combat with that enemy. The same basic requirements of performing acts of conspicuous gallantry in the face of the enemy are part of the eligibility requirements for the award of the VC for Australia.
- 11-43 On the other hand, since its institution in 1940, the George Cross had been the award considered appropriate to recognise the highest level of brave conduct while a prisoner of war. The following examples, from two separate conflicts, are of two Australians who have received the George Cross. The first, Captain Lionel Matthews, MC, was posthumously awarded the George Cross (1947) for bravery while a prisoner of war at the hands of the Japanese during the Second World War.³¹ Matthew's citation (in part) reads:

Captain Matthews was a prisoner of war held by the Japanese in Sandakan, Borneo between August 1942 and March 1944. During this period although in captivity he directed personally an underground intelligence organization. By sheer determination and organization he arranged through native contacts for the delivery of sorely needed medical supplies, food and money into the camp — factors which not only kept up the morale of courage of the prisoners but which undoubtedly saved the lives of many ... He was in a position where he could have escaped on numerous occasions ... but he declined, electing to remain where his efforts could alleviate the sufferings of his fellow prisoners. He displayed the greatest gallantry in circumstances of the gravest danger. His leadership conduct, unflagging optimism and impertability (sic) were an inspiration to all closely associated with him in the resistance organisation and to his fellow prisoners ... His conduct at all times was that of a very brave and courageous gentleman and he worthily upheld the highest traditions of an Australian Officer ...³²

- 11-44 The second example is that of Private Horace Madden, who was posthumously awarded the George Cross (1956) for bravery while a prisoner of war in the Korean War. He died in 1951. Madden's citation reads as follows:

Private Madden was held prisoner by the enemy until about 6th November 1951, when he died of malnutrition and the result of ill-treatment. During this period he openly resisted all enemy efforts to force him to collaborate,

³¹ *Supplement to the London Gazette*, no. 38134, 25 November 1947, p. 5635.

³² Lionel Colin Matthews, service record, NAA: B883, VX24597.

to such a degree that his name and example were widely known through the various groups of prisoners. Testimonials have been provided by Officers and men from many units of the Commonwealth and Allied Forces which show that the heroism he displayed was quite outstanding. Despite repeated beatings and many other forms of ill-treatment inflicted because of his defiance to his captors, Private Madden remained cheerful and optimistic. Although deprived of food because of his behaviour, resulting in severe malnutrition, he was known to share his meagre supplies purchased from Koreans with other prisoners who were sick. This did not deter him and for six months, though becoming progressively weaker, he remained undaunted in his resistance. He would in no way co-operate with the enemy. This gallant soldier's outstanding heroism was an inspiration to all his fellow prisoners.³³

Tribunal conclusion

- 11-45 As stated in paragraph 6-23, the Tribunal concluded it is not possible to recommend Cleary for an Imperial award for bravery.
- 11-46 In paragraph 8-46, the Tribunal also concluded that it would be difficult to attempt a merits review of events that took place more than half a century ago. Further, the Tribunal did not receive any new or compelling evidence upon which to base a decision on any possible award.
- 11-47 In Cleary's case this is doubly so, because the Tribunal is in effect being asked to undertake not a review but to make a primary decision as no nomination for an award had ever been prepared for Cleary. Further, the Tribunal did not receive any new evidence upon which to base a recommendation for a possible Defence honour.
- 11-48 In its 2010 inquiry, the old tribunal had not found any records of an assessment of Cleary's actions at Ranau nor a nomination for an honour. But it believed that, once it had established from records held by the Australian War Memorial that Cleary had been killed by the Japanese after his recapture, he was automatically eligible for a posthumous MID under the POW honours and awards policy set out in paragraphs 4-66 to 4-77 of the Report. In the course of this Inquiry, the Tribunal has found further documents concerned with the establishment of that policy in 1942 and now accepts that awards to prisoners of war, including a posthumous MID, were always intended to be discretionary, as with every other honour for gallantry or meritorious service.
- 11-49 Available records do not suggest that Cleary, during his period in captivity at Sandakan and Ranau, including his escape, carried out actions or conducted himself in a way which was above and beyond what a serviceman's duty at the time required. The Tribunal believes there is no basis for it to consider recommending Gunner Cleary for any further recognition under the Australian honours and awards system. The Tribunal also notes that the weight of submissions taken as a whole is against any further recognition of Gunner Cleary.

³³ *Supplement to the London Gazette*, no. 40665, 27 December 1955, p. 7299.

Tribunal recommendation

- 11-50 The Tribunal recommends that no action be taken to award Gunner Cleary a VC for Australia or other further form of recognition for his gallantry or valour.
- 11-51 In saying this, the Tribunal notes that Gunner Cleary's suffering, inhuman treatment and murder by guards at the Ranau prisoner of war camp are recorded and given recognition on the memorial erected at Ranau referred to in paragraph 11-34 above. The Tribunal recommends that the Australian Government continues to ensure that this memorial is maintained in perpetuity.