



SENATOR DAVID FEENEY
Parliamentary Secretary for Defence
Senator for Victoria

Friday, 1 March 2013

**Independent tribunal's findings accepted:
No VCs to be awarded posthumously**

The Australian Government has today announced that no Victoria Cross (VC) will be awarded posthumously for any of the 13 individuals who were the subject of the recent Inquiry into *Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour* (the Inquiry).

Following intense community interest into whether these heroes of Australia's military past should be awarded a VC for acts of gallantry and valour, in February 2011 the Parliamentary Secretary for Defence, Senator the Hon David Feeney, directed the Defence Honours and Awards Appeals Tribunal (the Tribunal) to inquire into the matter.

These individuals are:

- Gunner Albert Neil (Neale) Cleary
- Midshipman Robert Ian Davies
- Leading Cook Francis Bassett Emms
- Lieutenant (later Captain, later Senator) David John Hamer AM, DSC
- Private John Simpson Kirkpatrick
- Lieutenant Commander Robert William Rankin
- Able Seaman Dalmorton Joseph Owendale Rudd DSM
- Ordinary Seaman Edward Sheean
- Leading Aircrewman Noel Ervin Shipp
- Lieutenant Commander Francis Edward Smith
- Lieutenant Commander (later Commander) Henry Hugh Gordon Dacre Stoker DSO (Royal Navy)
- Leading Seaman Ronald Taylor
- Captain Hector Macdonald Laws Waller, DSO and Bar

A VC is only awarded for 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.

The Inquiry's report was handed to Government on 6 February 2013.

Senator Feeney has accepted the recommendations.

"Their gallantry and valour is beyond question. What this Inquiry was about was whether Australia should award a VC decades after the decision-maker at the time came to an alternate conclusion," Senator Feeney said.

“I do agree with the Tribunal’s findings. A VC must only be awarded in the most convincing of cases. It should only occur when there is clear evidence that maladministration has taken place by the decision-maker or if compelling new evidence has come to light.”

The Inquiry found no case where allegedly new evidence proved acceptable or compelling.

“This is the right decision. It will undoubtedly be a decision that will cause relief for some and anguish for others. Nevertheless, it is the only reasonable decision I could come to,” Senator Feeney said.

The decision also means the ongoing integrity of the Australian Honours and Awards system will be preserved.

“It is not my wish, nor the wish of the Defence community, to second-guess commanders who made decisions at the time. This would cause irreparable damage to the integrity of the honours and awards system,” Senator Feeney said.

Twelve of the 13 individuals who were the subjects of the Inquiry have already received some form of recognition for their actions.

Under the Imperial awards system that was operating at the time of the actions of the 13 individuals, only the VC or the Mention in Despatches (MID) could be awarded posthumously for actions in the presence of the enemy. Under Australia’s current system, all Defence honours can now be awarded posthumously.

Not only did the Tribunal consider the recognition of the 13 individuals but had also clarified a number of misconceptions and misunderstandings. The guidelines developed by the Tribunal over the course of the Inquiry can now be used in any future reviews.

Importantly, the Tribunal also decided that an alleged precedent for a VC was not a sufficient basis for recommending a retrospective honour. It came to the conclusion that no two cases were the same, and that commanders and committees which recommend honours do so solely on the merits of the individual case.

The Tribunal’s chairman, Mr Alan Rose AO, said the inquiry had been a demanding but interesting exercise that stretched almost two years.

“We received 166 submissions relating to the 13 names provided by Government and a further 174 submissions nominating an additional 140 individuals and groups,” Mr Rose said.

“We heard from witnesses at hearings in Melbourne, Sydney, Launceston, Brisbane, Perth, Adelaide and Canberra. The witnesses included family members, historians, current and former members of Parliament, and officials from the Departments of Defence and the Prime Minister and Cabinet.

“We conducted over 4,500 hours of research and sought advice from a range of government departments, organisations and individuals. There was more than 45 hours of testimony from 72 witnesses.”

The Tribunal has provided the Government with a preliminary analysis of the additional 174 submissions for its consideration.

Recommendation four of the report will be explored further by the Australian War Memorial. Director of the Australian War Memorial, the Hon Dr Brendan Nelson, said it is something the AWM would be pleased to explore.

“Without a doubt, these men have served their nation with pride. The AWM will certainly work through some concepts in the coming weeks to show our recognition and gratitude for their deeds.”

Recommendations:

The Tribunal made six recommendations:

Recommendation 1

No action be taken by the Australian Government to award a Victoria Cross for Australia or any other form of medallic recognition for gallantry or valour to any of the 13 individuals named in the Terms of Reference.

The Government has accepted this recommendation.

Recommendation 2

That a Unit Citation for Gallantry be awarded to HMAS *Yarra*.

The Government has accepted this recommendation.

Recommendation 3

That the names of the ships HMAS *Perth*, *Rankin*, *Sheean*, *Waller* and *Yarra* be perpetuated in the Royal Australian Navy after the present named ships are decommissioned.

The Government has accepted this recommendation to the extent that it does not constrain the Chief of Navy as the lead custodian of the Royal Australian Navy's heritage. Most notably, this includes his right to make recommendations for the naming of Australian warships. These ship names will be included in future considerations.

Recommendation 4

Other proposals to recognise the gallantry of some of the individuals, such as a permanent or rotating exhibition at the Australian War Memorial, be explored further.

The Government has accepted this recommendation.

Recommendation 5

The Australian Government continues to ensure that the memorial erected to commemorate the Sandakan death marches at Ranau, East Malaysia, is maintained in perpetuity.

The Government has accepted this recommendation.

Recommendation 6

The Department of Defence amend its Honours and Awards Manual to reflect the changes resulting from the establishment of the Defence Honours and Awards Appeals Tribunal and the advice from the Australian Government Solicitor that the

Australian Parliament could pass a valid act directing the Minister for Defence to recommend particular honours.

The Government has accepted this recommendation.

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The Tribunal's report can be found at: www.defence-honours-tribunal.gov.au

Imagery can be found at: <http://images.defence.gov.au/12132870>

Further information:

Gunner Albert Neil (Neale) Cleary

Albert Neil Cleary was born on 16 June 1922 at Geelong, Victoria and joined the Citizens Military Force in June 1940. Cleary discharged in April 1941 in order to join the Second Australian Imperial Force.

Cleary was captured with other survivors of the Australian 8th Division on its surrender at Singapore in February 1942. In July of that year, Cleary and many other prisoners were sent to Sandakan, Borneo, where they constructed an airfield.

In March 1945, after surviving a forced march from Sandakan, Cleary escaped from the prisoner of war camp at Ranau but was soon recaptured. Cleary later died as a result of severe mistreatment inflicted by Japanese guards following his recapture.

Cleary did not receive an award at the time. In 2011, following an inquiry by the 'old' Defence Honours and Awards Tribunal, Cleary, along with 19 other former Far East Prisoners of War was awarded a posthumous Commendation for Gallantry.

The Tribunal's conclusions: The Tribunal concluded that there is no basis for Cleary being granted further recognition under the Australian honours and awards system. Further details can be found in Chapter 11 of the Tribunal's report.

Midshipman Robert Ian Davies

Robert Ian Davies was born on 13 November 1923 at Greenwich, New South Wales and joined the Navy as a cadet midshipman in January 1937. In March 1941 Davies joined the British battle cruiser HMS *Repulse* as a substantive Midshipman.

Repulse, the battleship HMS *Prince of Wales*, and four destroyers formed Force Z, sent from Britain to the Far East in late 1941 and arrived in Singapore on 2 December. On 10 December, Force Z came under a heavy Japanese air attack off the Malayan coast and in the ensuing engagement both *Prince of Wales* and *Repulse* were lost.

As the *Repulse* was sinking, Davies was seen at an Oerlikon anti-aircraft gun still engaging the Japanese aircraft that were attacking the ship. Davies received a posthumous Mention in Despatches for his actions.

The Tribunal's conclusions: The Tribunal found that the awards process was administered correctly and that there was no new evidence to sustain an alternative finding that Davies's gallantry was inadequately recognised. Further details can be found in Chapter 12 of the Tribunal's report.

Leading Cook Francis Bassett Emms

Francis Bassett Emms was born in Launceston, Tasmania on 28 November 1909 and joined the Royal Australian Navy in March 1928.

After initially qualifying as a gunnery rating, owing to failing eyesight Emms transferred to the Supply Branch and was re-rated as a cook in 1937.

Emms was aboard HMAS *Kara Kara* during the Japanese air raid on Darwin on 19 February 1942. Emms manned a machine gun during the raid and although seriously wounded early in the action, he continued to fight his gun until the enemy was finally beaten off.

Emms received a posthumous Mention in Despatches and was cited in the recommendation for his award as probably saving the ship and many of the ship's company.

The Tribunal's conclusions: The Tribunal determined that the awards process was followed correctly and that there was no new evidence to sustain an alternative finding that Emms's gallantry was inadequately recognised. Further details can be found in Chapter 13 of the Tribunal's Report.

Lieutenant (later Captain, later Senator) David John Hamer AM, DSC

David John Hamer was born in Melbourne on 5 September 1923 and joined the Royal Australian Navy in 1937 as a cadet midshipman. Hamer served as a gunnery and air defence officer aboard HMAS *Australia* during the allied campaign to retake the Philippines in late 1944 and early 1945.

In January 1945, while operating in the Lingayen Gulf, *Australia* was subjected to repeated aerial attacks, being hit five times by suicide aircraft. Hamer was awarded the Distinguished Service Cross for his part in this operation, which mainly involved directing *Australia's* anti-aircraft fire. On one occasion when it appeared certain that a suicide plane would hit his position he maintained his place without flinching, the wing of the plane passing close to his head.

Hamer survived the war and went on to enjoy long and successful naval and political careers. Hamer served in both houses of Federal Parliament.

The Tribunal's conclusions: Having looked closely at the process followed and claims of new evidence, the Tribunal found that Hamer was appropriately honoured with the award of the Distinguished Service Cross. Further details can be found in Chapter 14 of the Tribunal's Report.

Private John Simpson Kirkpatrick

John Simpson Kirkpatrick was born in South Shields, England on 6 July 1892. After a brief association with the local Territory Army, Kirkpatrick joined the merchant navy and deserted to New South Wales in May 1910.

While in Perth in August 1914, he joined the Australian Imperial Force as John Simpson. Part of the 3rd Field Ambulance, Australian Army Medical Corps, Private Simpson landed at ANZAC Cove on 25 April 1915. Simpson came across a donkey in a hut, and with it worked up and down the dangerous valleys collecting slightly wounded servicemen and carrying them to the dressing stations. Simpson soon became known to the men fighting in the tight confines of the Gallipoli beach head.

Simpson continued this work until 19 May 1915, when he was killed in action by Turkish machine gun fire. Simpson was Mentioned in Despatches for his service.

The Tribunal's conclusions: The Tribunal found that Simpson's initiative and bravery was representative of all other stretcher bearers of 3rd Field Ambulance and that he was appropriately honoured with a Mention in Despatches. Further details can be found in Chapter 15 of the Tribunal's Report.

Lieutenant Commander Robert William Rankin

Robert William Rankin was born in Cobar, New South Wales on 3 June 1907. Rankin joined the Royal Australian Navy in 1921. In early 1942, Rankin took command of the sloop HMAS *Yarra*.

On 4 March 1942, *Yarra* was escorting a small convoy from Javanese waters to Fremantle when the convoy came under attack from a far superior Japanese force of three cruisers and two destroyers. Some time early in the action, Rankin ordered *Yarra* to make smoke in order to screen the convoy and gallantly turned towards and attacked the Japanese force. Unable to match the vastly superior firepower of the Japanese, *Yarra* was sunk. The other ships of the convoy suffered the same fate or were scuttled. Rankin was killed in the action.

Rankin did not receive any medallic recognition for his actions, but in 2001 a Collins class submarine was named in his honour and given the motto 'Defend the Weak' in reference to of *Yarra's* last action.

The Tribunal's conclusions: While the Tribunal was able to conclude that Rankin's actions were clearly gallant, it was not persuaded they met the exceptionally stringent criteria for the VC for Australia. The Tribunal also recommends that Lieutenant Commander Rankin, along with the other members of HMAS *Yarra's* crew who served on either 5 February 1942 or 4 March 1942, receive the Unit Citation for Gallantry for their extraordinary gallantry during both of these actions. Further details can be found in Chapters 21 and 22 of the Tribunal's Report.

Able Seaman Dalmorton Joseph Owendale Rudd DSM

Dalmorton Joseph Owendale Rudd was born in Sydney on 14 June 1896 and joined the Royal Australian Navy in October 1913.

While serving in HMAS *Australia* at the end of February 1918, Leading Seaman Rudd volunteered for special duty with the Royal Navy and on 22/23 April 1918 Rudd took part

in the shore raid of the German fortifications at Zeebrugge. The gallantry of Rudd and those serving with him led to their participation in one of a number of ballots to select a sailor for the award of the Victoria Cross. For his part in the raid, Rudd was awarded the Distinguished Service Medal.

On 12 May 1919, as a punishment for committing a breach of discipline, Rudd was deprived of his second Good Conduct Badge and was demoted to Able Seaman. Rudd was subsequently involved in a mutiny on HMAS *Australia* and on pleading guilty was sentenced to 18 months imprisonment. He was granted an early release and discharged from the Navy on 20 December 1919. Rudd died in 1969 aged 73.

The Tribunal's conclusions: The Tribunal concluded that the process by which Rudd was awarded the Distinguished Service Medal (DSM) was fair and appropriate recognition. Further, and contrary to some accounts, Rudd did not forfeit his DSM as a result of a court martial for mutiny in 1919. Further details can be found in Chapter 16 of the Tribunal's Report.

Ordinary Seaman Edward Sheean

Edward Sheean was born at Lower Barrington, Tasmania on 28 December 1923. Sheean joined the Royal Australian Navy Reserve in April 1941 and in June 1942 was posted to the corvette HMAS *Armidale*.

On 1 December 1942 while in the Timor Sea, *Armidale* came under air attack from a Japanese force including nine bombers and three fighters. The Japanese hit *Armidale* with two air launched torpedoes, which resulted in the crew being ordered to abandon ship. After this order to abandon ship was given, the crew leapt into the sea and swam away from *Armidale*, attempting to avoid the Japanese aircraft. Already injured, Sheean, the loader of a three man Oerlikon gun, disregarded the order to abandon ship and shot down at least one Japanese aircraft until he died at his weapon.

Sheean was awarded a posthumous Mention in Despatches for his bravery and devotion during this action. In 1999, the Collins class submarine HMAS *Sheean* was launched with the motto 'Fight On' in honour of Sheean's final act. *Sheean* is the only Australian naval vessel ever to be named after a sailor.

The Tribunal's conclusions: The Tribunal concluded that Sheean's actions displayed conspicuous gallantry but did not reach the particularly high standard required for recommendation for a VC. The Tribunal concluded that it could not recommend that Ordinary Seaman Sheean be awarded the VC for Australia. Further details can be found in Chapter 17 of the Tribunal's Report.

Leading Aircrewman Noel Ervin Shipp

Noel Ervin Shipp was born at Brisbane on 24 December 1944. Shipp joined the Royal Australian Navy in January 1963 as an underwater control rating and in July 1967 transferred to the air crewman category. The following year, Shipp was posted to the Royal Australian Navy Helicopter Flight Vietnam (RANHFV) which was integrated with the US 135th Assault Helicopter Company. Shipp's role was door gunner in UH1-C helicopter gunships.

On 31 May 1969 the 135th was supporting the extraction of South Vietnamese infantry in Dinh Tuong Province when they came under intense ground fire from the enemy. Two gunships, one of which carried Shipp as the door gunner were directed to the source of ground fire and commenced attacking runs with rockets and machine guns. Shipp's helicopter itself came under fire and crashed, killing all on board.

Prior to the crash, Shipp was reported as hanging outside the aircraft, exposing himself to intense fire. After the aircraft was hit and as it was going down Shipp was reported to have continued delivering devastating fire into the enemy positions. While Shipp did not receive any medallic recognition for his actions on 31 May 1969, a division at the Navy's recruit school has recently been named in his honour.

The Tribunal's conclusions: The Tribunal found that Shipp's commander submitted no recommendation for an Australian honour for him. This was a valid decision and due process was followed. The Tribunal concluded that the judgements made by the appropriate authorities at the time were valid. Further details can be found in Chapter 18 of the Tribunal's Report.

Lieutenant Commander Francis Edward Smith

Francis Edward Smith was born at Lismore on 8 October 1908 and joined the Royal Australian Navy Reserve in 1926. In April 1940 he joined HMAS *Yarra*.

In February 1942, Smith and his gun crew were praised by their then Captain, Commander W.H. Harrington RAN for good work in shooting down an aircraft while *Yarra* rescued over 1800 British troops from the burning British Transport *Empress of Asia*.

Smith was killed with Lieutenant Commander Rankin and Leading Seaman Taylor when *Yarra* was sunk on 4 March 1942. *Yarra* was escorting a small convoy from Javanese waters to Fremantle when the convoy came under attack from a far superior Japanese force of three cruisers and two destroyers. Some time early in the action, *Yarra* gallantly turned towards and attacked the Japanese force. Unable to match the vastly superior firepower of the Japanese, *Yarra* was sunk. The other ships of the convoy suffered the same fate.

Smith did not receive any medallic recognition for his service on *Yarra* for either the February or March actions.

The Tribunal's conclusions: The Tribunal concluded that there was insufficient evidence to recommend an individual gallantry honour to Smith. The Tribunal recommends that Lieutenant Commander Smith, along with the other members of *Yarra*'s ship's company who served in *Yarra* on either 5 February 1942 or 4 March 1942 receive the Unit Citation for Gallantry for their extraordinary gallantry on both of these dates. Further details can be found in Chapters 21 and 23 of the Tribunal's Report.

Lieutenant Commander (later Commander) Henry Hugh Gordon Dacre Stoker DSO (Royal Navy)

Henry Hugh Gordon Dacre Stoker was born at Dublin, Ireland on 22 February 1885. Stoker joined the Royal Navy in 1900 and in late 1913 assumed command of the Royal Australian Navy submarine *AE2*.

After service in the Pacific soon after the outbreak of war, Stoker brought *AE2* into the Mediterranean to support the Gallipoli campaign. Against considerable Turkish resistance and an unfavourable current, over 25-26 April 1915 *AE2* was the first Allied vessel to pass through the Dardanelles into the Sea of Marmara. For the next four days *AE2* executed torpedo attacks without success, but actively made her presence known to the Turks.

On 30 April, while attempting to rendezvous with the British submarine *E14*, *AE2* was attacked by a Turkish torpedo boat. Stoker attempted to dive, but the submarine lost trim and went out of control. After being hit, Stoker ordered the submarine to be scuttled. Stoker and the crew spent the rest of the war in a Turkish prison camp. Stoker was awarded the Distinguished Service Order and Mentioned in Despatches following his release from captivity. Stoker died in February 1966.

The Tribunal's conclusions: The Tribunal concluded that the process was conducted fairly and in accordance with the rules. Stoker was appropriately awarded the Distinguished Service Order and an MID. Further details can be found in Chapter 19 of the Tribunal's Report.

Leading Seaman Ronald Taylor

Ronald Taylor was born at Melbourne on 29 April 1918 and joined the Royal Australian Navy in June 1935. After training as a gunnery rating in 1938, Taylor served in the destroyer HMAS *Vampire* and the cruiser HMAS *Adelaide* before transferring to the sloop HMAS *Yarra* in August 1939.

In February 1942, Taylor earned the praise of his Captain, Commander W.H. Harrington RAN for good work at his gun while *Yarra* rescued over 1800 British troops from the burning British Transport *Empress of Asia*.

Taylor was killed with Lieutenant Commander Rankin and Lieutenant Commander Smith when *Yarra* was sunk on 4 March 1942. *Yarra* was escorting a small convoy from Javanese waters to Fremantle when the convoy came under attack from a far superior Japanese force of three cruisers and two destroyers. Some time early in the action, *Yarra* gallantly turned towards and attacked the Japanese force. Unable to match the vastly superior firepower of the Japanese, *Yarra* was sunk. The other ships of the convoy suffered the same fate.

Taylor was reported to have stayed at his gun after the order to abandon ship had been given, continuing to fire as the ship went down.

While Taylor did not receive medallic recognition for his service in either action, a division at the Navy's recruit school has recently been named in his honour.

The Tribunal's conclusions: The Tribunal concluded that there was insufficient evidence to recommend an individual gallantry honour to Taylor. The Tribunal recommends that Leading Seaman Taylor, along with the other members of *Yarra's* crew who served on either 5 February 1942 or 4 March 1942, receive the Unit Citation for Gallantry for their extraordinary gallantry on both of these dates. Further details can be found in Chapters 21 and 24 of the Tribunal's Report.

Captain Hector Macdonald Laws Waller, DSO and Bar

Hector Macdonald Laws Waller was born at Benalla, Victoria on 4 April 1900 and joined the Royal Australian Navy as a cadet midshipman in December 1913. While he was in training for the majority of World War I, Waller served in the battleship HMS *Agincourt* in the British Grand Fleet during 1918.

Following the outbreak of World War II Waller was sent to the Mediterranean to command the destroyer HMAS *Stuart* and the 19th Destroyer Division. During this time Waller was awarded the Distinguished Service Order, Bar to the Distinguished Service Order and Mentioned in Despatches twice.

In September 1941, Waller returned to Australia to command the cruiser HMAS *Perth*. In late January 1942 *Perth* was sent to join the American-British-Dutch-Australian (ABDA) force, hurriedly set up in an attempt to curb the Japanese advance into South East Asia. While *Perth* escaped the resounding Allied defeat at the Battle of the Java Sea, she was sunk in the subsequent Battle of the Sunda Strait on 1 March 1942.

Waller received a posthumous third Mention in Despatches for this action. In 1997, the submarine HMAS *Waller* was named in his honour and given the motto 'tenacity'.

The Tribunal's conclusions: The Tribunal concluded that, conspicuous though Waller's personal bravery was and his devotion to duty including to his crew to the very end extraordinary, these actions did not reach the particularly high standard required for recommendation for the VC. The Tribunal concluded that it could not recommend that Captain Waller be awarded the VC for Australia. Further details can be found in Chapter 20 of the Tribunal's Report.
