



**Australian Government**

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Defence Honours and Awards Appeals Tribunal

**INQUIRY INTO  
UNRESOLVED RECOGNITION FOR SERVICE WITH  
THE UNITED STATES ARMY SMALL SHIPS SECTION**

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## LETTER OF TRANSMISSION

### **Inquiry into Unresolved Recognition for Service with the United States Army Small Ships Section**

The Hon. Darren Chester MP  
Parliamentary Secretary for Defence  
Parliament House  
Canberra ACT 2600

Dear Parliamentary Secretary,

I am pleased to present the Defence Honours and Awards Appeals Tribunal's Report on the *Inquiry into Unresolved Recognition for Service with the United States Army Small Ships Section*.

The inquiry was conducted in accordance with the Terms of Reference approved by the former Parliamentary Secretary for Defence, Senator the Hon. David Feeney on 16 May 2013. The panel of the Tribunal that conducted the inquiry arrived unanimously at the findings and recommendations set out in its report.

In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011*, a copy of this report will be published on the Tribunal's website – [www.defence-honours-tribunal.gov.au](http://www.defence-honours-tribunal.gov.au) – 20 working days after the day this report is provided to you.

I would be grateful for advice on your response to this report when available.

Yours sincerely



**Mr Alan Rose**  
Chair  
Defence Honours and Awards Appeals Tribunal

24 March 2014

## **TERMS OF REFERENCE**

The Defence Honours and Awards Appeals Tribunal (the Tribunal) is directed to inquire into and report on the eligibility of Australian personnel who served in the United States Army Small Ships Section from 1942 to receive the Australia Service Medal 1939-45 and or the Australian Service Medal 1945-75 with Clasp 'JAPAN'.

The Tribunal is to examine relevant documentary evidence, and consider the nature and context of the service in relation to the criteria for these Australian awards, in order to arrive at a fair and sustainable response to claims for recognition.

The Tribunal, in conducting this Inquiry, will take into account the findings of the previous inquiry on the matter of recognition for those who served in the United States Army Small Ships Section from 1942 to 1945, which was completed by the Defence Honours and Awards Tribunal in 2009 and the findings accepted by Government.

The Tribunal is to determine its own procedures, in accordance with the general principles of procedural fairness, when conducting its inquiry as set out in these Terms of Reference.

The Tribunal is to report, in writing, to the Parliamentary Secretary for Defence on the findings and recommendations that arise from the Inquiry.

In making its findings and formulating its recommendations the Tribunal is required to maintain the integrity of the Australian honours and awards system and identify any consequential impact that any finding or recommendation may have on that system.

## EXECUTIVE SUMMARY

### Background

1. In 2009, the Australian Government accepted a recommendation of the former Defence Honours and Awards Tribunal (old Tribunal) that Australian civilian personnel who served in ships operated by the United States Army Small Ships (USASS) Section between 1942 and 1945 be recognised as eligible for Australian or Imperial recognition for that service on the same basis as members of the Merchant Navy. Since that time, many former members of the USASS have submitted claims for The Australia Service Medal 1939-45 (ASM 1939-45), and the Australian Service Medal 1945-75 with Clasp 'JAPAN' (ASM 1945-75 with Clasp 'JAPAN'). Due to uncertainty as to the eligibility of those former members in regard to these awards, the Parliamentary Secretary for Defence gave a direction to the Tribunal on 16 May 2013 to hold an Inquiry into unresolved recognition for members of the USASS.

2. The USASS was established in 1942 to transport men and materiel in support of US and allied forces operating in New Guinea and the Pacific Islands. Some ships and boats were obtained, and merchant seamen and other personnel were recruited for USASS from various sources in Australia. They served through 1945 supporting the allied war effort in the region. For this service, the Tribunal was required to examine their eligibility for recognition with the award of the ASM 1939-45. After the war ended, the USASS provided support to the US Army during its military occupation of Japan. For this service, the Tribunal was required to examine eligibility for recognition with the award of the ASM 1945-75 with Clasp 'JAPAN'.

3. To ensure that recommendations it might make would be fair and sustainable, the Tribunal took into account the findings of the 2009 inquiry, analysed the arguments put forward in various submissions, undertook extensive research and analysed the eligibility criteria set out in the Royal Warrant for the ASM 1939-45 and the Regulations for the ASM 1945-75 with Clasp 'JAPAN'.

4. The Inquiry was undertaken by the following members of the Tribunal:

Brigadier Gary Bornholt AM, CSC (Retd) (Presiding Member)

Dr Jane Harte

Air Commodore Mark Lax OAM, CSM (Retd)

### The ASM 1939-45

5. The ASM 1939-45 is Australian recognition instituted under the Imperial system of honours and awards. The Tribunal found that no Regulations have ever been made for the award. As such, eligibility must be determined by applying the broadest interpretation of the conditions set out in the Royal Warrant alone. The Warrant provides for the medal's award in recognition of service rendered between 1942 and 1945, by members of the *Australian Mercantile Marine*, who shall have served at sea, for 30 days. Those members are Australian seamen serving on ships registered in Australia.

6. In examining the eligibility criteria set out in the Warrant, the Tribunal sought to understand the meaning of the term '... shall have been served at sea' in relation to the context of eligible service. It looked at how the term might have been used for Royal Australian Navy (RAN) personnel who established eligibility for awards under the Imperial system in recognition of service with the Merchant Navy. The Tribunal found that for RAN

personnel serving in Australian merchant ships, Commonwealth Navy Order 400/45 dated 11 September 1945 Section III paragraph 1(A) (c) (i), defined 'service afloat' as 'other seagoing service' including 'service while embarked for duty in merchant ships ...'. As such, an appropriately broad meaning of the term '... shall have been served at sea' should have the same normal meaning as 'service afloat', 'seagoing service' or 'sea service'. Therefore to establish eligibility for awards under the Imperial system, including the ASM 1939-45, a member of the Australian Mercantile Marine would need to have 'rendered service while embarked for duty in merchant ships'.

6. The Tribunal concluded that the Australian members of the USASS who rendered service while embarked for duty on ships registered in Australia, between 1942 and 1945, for the prescribed period are eligible for the award of the ASM 1939-45.

### **The ASM 1945-75 with Clasp 'JAPAN'**

7. The ASM 1945-75 with Clasp 'JAPAN', is an Australian award that recognises '... members of the Australian Merchant Navy, attached in an official capacity for full time duty with the Australian Military contribution ... in the British Commonwealth Occupation Force (BCOF) in Japan' from 3 September 1945 to 30 April 1952. BCOF was made up from military contributions from Britain, Australia, New Zealand and India. It operated in its own specific area of Japan, separate from the US area of occupation and control.

8. The Tribunal conducted extensive research and considered submissions, none of which was able to produce any record of the USASS operating inside the BCOF area. Nor was there any evidence that USASS either directly supported or was attached in an official capacity for full time duty with the Australian Military contribution to BCOF as required by the Regulations. There is also no evidence that suggests that the Australian military contribution relied upon the US Army for its support, rather BCOF was a self-contained organisation which provided for its own requirements.

9. The Tribunal concluded that eligibility has not been established for the award of the ASM 1945-75 with Clasp 'JAPAN' to Australian seamen serving with the USASS.

### **Recommendations**

10. The Tribunal recommendations are as follows:

**Recommendation 1:** Australian seamen who rendered service while embarked for duty in merchant ships registered in Australia, that were operated by the United States Army Small Ships Section between 1942 and 1945, for the prescribed period, should be recognised with Australian and Imperial awards, including The Australia Service Medal 1939-45.

**Recommendation 2:** Australian seamen who served in ships operated by the United States Army Small Ships Section are not eligible for the Australian Service Medal 1945-75 with Clasp 'JAPAN'.

# **REPORT OF THE TRIBUNAL**

## **Conduct of the Inquiry**

1. The Defence Honours and Awards Appeals Tribunal (the Tribunal) is established under the *Defence Act 1903* (the Act). Section 110UA of the Act sets out the functions of the Tribunal which includes inquiring into matters concerning Defence honours or awards for eligible service. Section 110W of the Act provides that the Minister for Defence may give the Tribunal a direction in writing to hold an Inquiry into a specified matter. The Tribunal then must hold an Inquiry into that specified matter and report with recommendations the Tribunal considers appropriate, to the Minister.

2. On 16 May 2013 the Parliamentary Secretary for Defence gave a direction to the Tribunal to hold an Inquiry into unresolved recognition for members of the United States Army Small Ships Section (USASS). The Terms of Reference for the Inquiry appear earlier in this report.

3. The Inquiry was undertaken by the following members of the Tribunal:

Brigadier Gary Bornholt AM, CSC (Retd) (Presiding Member)  
Dr Jane Harte  
Air Commodore Mark Lax OAM, CSM (Retd)

## **Conflict of Interest**

4. No conflicts of interest were declared.

## **Steps taken in the inquiry**

5. The Inquiry commenced on 5 July 2013 with a press release and advertisements being placed in major newspapers nationally giving notice of the Inquiry and calling for submissions by 16 August 2013. In July 2013 the Tribunal wrote to both the Department of Defence (Defence) and the President of the US Army Small Ships Association Inc. requesting a submission.

6. By the closing date, the Tribunal had received five written submissions from members of the public. Defence also provided a written submission. The President of the United States Army Small Ships Association Inc., Mr Ernest Flint MBE ED, provided a written submission and over the course of the Inquiry also provided the Tribunal with a range of documents.

7. The Tribunal conducted an initial meeting on 9 September 2013 to scope the task and request further research. Subsequently, a public hearing was held in Canberra on 14 November 2013. Three witnesses made oral submissions to the Tribunal and a further two were interviewed by teleconference. The hearing found that the Defence submission lacked any consideration of the government's acceptance of the recommendations from the 2009

Inquiry by the Defence Honours and Awards Tribunal (the old Tribunal).<sup>1</sup> Consequently the Chair wrote to the Chief of the Defence Force (CDF) on 21 November 2013 inviting Defence to make a further submission by 19 December 2013. The Defence response dated 10 January 2014 was not received by the Tribunal until 21 January 2014, resulting in a delay to the Tribunal's timely completion of the Inquiry.

8. In this report, Appendix 1 is a list of the submitters. Appendix 2 provides details of the Tribunal hearings and the witnesses who appeared.

### **Background to the United States Army Small Ships Section**

9. During the Second World War the movement of merchant ships, crewed by members of the Merchant Navy, and the nature and distribution of their cargoes was controlled by relevant governments to support the war effort. Some ships were taken directly into government service, the most famous being the British ocean liners *Queen Elizabeth* and *Queen Mary*. Other ships and boats, some as small as fishing boats, provided direct support for the armed services in the field. The USASS were in this category.

10. Essentially the role of the Merchant Navy in wartime is much the same as that in peacetime – the movement of materiel and persons across the oceans and seas of the world. In peacetime, however, the imperative for transporting cargoes is commercial; in wartime it is the support and maintenance of the war effort.

11. A need was identified by the US Army for small ships to transport men and materiel in support of its forces in New Guinea and the Pacific Islands. Small ships would be required to operate in uncharted waters which were studded with concealed shoals, rocks and reefs. The ships had to be small enough to have the shallow draft that would enable them to approach and land men and materiel directly over beaches as the armies did not always operate around convenient harbours.

12. In 1942, General Douglas MacArthur, Supreme Allied Commander South West Pacific Area (SACSWPA), established the USASS Section under the direct command of the US Army. This organisation was in essence SACSWPA's private 'merchant navy'. It ensured that General MacArthur would have access to merchant shipping support without having to compete with the US Navy for priority. USASS was organised and managed by the US Army Transportation Service (USATS) on behalf of SACSWPA.

13. Ships and boats for USASS were obtained from various sources in Australia. This was done by outright purchase, charter or requisition of suitable ships. The ships ranged in size from small coastal and riverine fishing and trading vessels to larger ocean going and merchant ships, some of 10,000 tons or more. Personnel to crew the fleet were engaged either by direct recruitment by USATS or via the US Maritime Administration, which set up offices in Australia to recruit merchant seamen and other personnel for USASS.

14. The Australian civilians recruited were generally either too young or too old to serve in the Defence Forces or were medically unfit for military service. It was necessary for prospective recruits to have a 'manpower clearance'. In this regard, the Commonwealth of Australia Manpower Directorate actively engaged with the prospective recruits to ascertain

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<sup>1</sup> The Defence Honours and Awards Tribunal operated administratively until 5 January 2011 when the Defence Honours and Awards Appeals Tribunal was established under provisions in the *Defence Legislation Amendment Act 2010*.



their willingness to be employed by the USASS and then provided the required clearances for that to occur.

15. Civilian merchant seamen were engaged under contract to the US Government. Rates of pay were set out in the contract and these, together with the other conditions of service, were markedly more generous than those offered to members of the British Merchant Navy. They were also superior to the pay and conditions of Australian Military personnel serving in small ships operated by the Australian Army, such as those serving in Australian Army water transport units, which performed similar functions to the US Army Small Ships.

16. The USASS flew the US flag for command and administrative reasons and ‘carried not only troops, but also ammunition, food and medical supplies, artillery pieces and even towed tanks. They often brought the wounded and dead back to Australia. They were frequently in great danger and endured high casualties’.<sup>2</sup> The small ships were initially operated in support of the allied forces in New Guinea but later many vessels operated in other areas such as the Philippines.<sup>3</sup>

17. Beyond the end of the Second World War, some elements of the USASS and personnel continued to serve in support of the post-war allied occupation of Japan.

### **Previous Consideration**

#### *The Committee of Inquiry into Defence Awards*

18. In 1994, the Committee of Inquiry into Defence and Defence Related Awards (CIDA) considered submissions and took evidence on behalf of members of the Merchant Marine seeking special recognition through a separate medal or award for their service. CIDA noted that a special Imperial award, the Mercantile Marine War Medal 1914-1918, was struck for merchant mariners for their service during the First World War, but no similar provision was made for the Second World War. In respect of recognition of merchant marine service during the Second World War, the report specifically stated:

*As members of the Merchant Marine were eligible to qualify for the full range of campaign and service medals, the Committee believes that this constitutes sufficient recognition.*<sup>4</sup>

19. CIDA also spent some time considering service with the British Commonwealth Occupation Force in Japan (BCOF) in the immediate post-war period. Chapter 3 of the report concludes with the recommendation that an Australian Service Medal be awarded to members who met the medal’s eligibility criteria. This recommendation was subsequently accepted, as discussed in Part II of this report.

#### *The old Tribunal*

20. In 2008, the old Tribunal was directed by Government to undertake an Inquiry into the eligibility of Australian civilian personnel who served in the USASS Section for

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<sup>2</sup> Submission 2, Professor Edgar Gold. Professor Gold had previously provided a submission to the old Tribunal’s Inquiry, and subsequently resubmitted the information to this Inquiry p 3.

<sup>3</sup> Ibid, p 4.

<sup>4</sup> *Report of the Committee of Inquiry into Defence and Defence Related Awards (CIDA)*, AGPS, Canberra, 1994, p 20.

Australian or Imperial recognition for their service between 1942 and 1945. In 2009, the Government accepted the recommendations arising from that Inquiry (a copy of the report is at Appendix 4) as follows:

**Recommendation 1:** Australian civilian personnel who served in ships operated by the United States Army Small Ships Section between 1942 and 1945 should be recognised as eligible for Australian or Imperial recognition for that service on the same basis as members of the Merchant Navy, and

**Recommendation 2:** There should be no requirement for those personnel to relinquish any US awards that they may have received in respect of their service in the United States Army Small Ships prior to receiving Australian recognition for that service.

## **The Claims for Recognition**

21. The claims for recognition being examined in this Inquiry for further medallic recognition for members of the USASS Section are for two quite different periods of service and different awards. This report therefore considers the claims in two separate parts. Part I examines the claims for recognition of service rendered during the Second World War with the award of The Australia Service Medal 1939-45 (the ASM 1939-45). Part II examines the claims for recognition of post-Second World War service with the award of the Australian Service Medal 1945-75 with Clasp 'JAPAN' (the ASM 1945-75 with Clasp 'JAPAN').

## **PART I**

### **The Australia Service Medal 1939-1945**

22. Following the conclusion of the Second World War in 1945, the Australian Defence Committee recommended that Australia should institute a medal of its own in connection with the Pacific War, and that such a medal should be awarded, not only to the Australian Imperial Forces, but also to selected civilian organisations. An 18 month qualifying period for full time personnel was recommended for those who served between 3 September 1939 and 15 August 1945.<sup>5</sup>

23. On 17 January 1946 Cabinet approved that a 'medal be instituted for all members of the Defence Forces of the Commonwealth of Australia who participated in the 1939-1945 war; these to include members of the Mercantile Marine, Civil Air pilots, members of the Comforts Funds and Red Cross Funds, and to include both men and women'.<sup>6</sup> Subsequently His Majesty King George VI instituted the ASM 1939-45 by Royal Warrant on 30 August 1949. The Royal Warrant was published in the *Commonwealth of Australia Gazette* in November that year.<sup>7</sup> There is provision in the Warrant for the Governor-General to make

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<sup>5</sup> See report, Principal Administrative Officers Committee (Personnel) Meeting 20 September 1945, NAA: A816, 66/301/251. In 1945 the Defence Committee consisted of the three Chiefs of Staff and an officer of the Secretariat of the Department of Defence.

<sup>6</sup> National Archives of Australia (NAA): A816, 66/301/251. Cabinet Agendum No 1002A: Proposal for an Australian Decoration.

<sup>7</sup> *Commonwealth of Australia Gazette* No. 91 dated 30 November 1949.

Regulations to carry out the purposes of the Warrant, but no Regulations have ever been made. Pertinent to this Inquiry, the Warrant in part states:

3. The persons eligible for the Medal shall be those of Our faithful subjects and others, male and female, who between the 3<sup>rd</sup> September 1939 and the 2<sup>nd</sup> September 1945, rendered the required service in the Australian Armed Forces, in the Australian Mercantile Marine or as civil members of the Royal Australian Air Force Reserve who served as aircrew in civil aircraft in operational areas.

4. Representatives of philanthropic bodies, official press correspondents, official photographers and other civil personnel attached to the Armed Forces in an official capacity for full-time duty in uniform shall also be eligible.

5. Eligibility shall not be affected by the grant of any other general award for service in the war of 1939-45...

6. ...

7. ... In the case of members of the Australian Mercantile Marine, it shall be a requirement that the eighteen months shall have been served at sea...

24. The power to vary the conditions of the 1949 Royal Warrant was delegated to the Governor General in 1995 by way of an exchange of letters between Prime Minister Paul Keating and Her Majesty the Queen. This delegated power was used in 1996 to reduce the qualifying period for the ASM 1939-45 from eighteen months to 30 days for full time service; and from three years to 90 days for part time service.<sup>8</sup>

### **Submissions from the Public**

25. The Tribunal received five submissions from the public - one against, one providing no position but documentation for a relative, and three in support.

26. The Tribunal received one submission from the public that was against the issue of the ASM 1939-45. Mr Cec Weekes, President of the Australian Water Transport Association RAE AIF & RACT (NSW Branch), stated in his written and oral submission that members of his Association were against the issue of the award to the members of the US Army Small Ships Section because:

- they proudly wore the uniform of the United States of America;
- their vessels flew the flag of the USA;
- they received their pay from the USA; and
- their loyalty was clearly to the US.

27. The Tribunal received three submissions from the public supporting the award of the ASM 1939-45.

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<sup>8</sup> *Commonwealth of Australia Gazette* No. S 309 dated 21 August 1996.

28. Mr Ernest Flint, President of the US Army Small Ships Association Inc., provided the Tribunal with three written submissions<sup>9</sup> and made an oral submission at the Tribunal Hearing. Mr Flint gave a history of the USASS, a resume of the old Tribunal's findings and a note on the fact that the ASM 1939-45 was not mentioned in that report. Mr Flint sought redress for the award of the ASM 39-45 on the grounds of fairness, logic and by extension to previous findings.

29. Professor Edgar Gold provided a written submission and made an oral submission at the Tribunal Hearing in support of the award of the ASM 1939-45. In his written submission, Professor Gold also attached a copy of his earlier submission to the 2009 US Army Small Ships Inquiry. Professor Gold submitted that:

- a. Firstly, in general terms of fairness as well as common sense, it beggars belief that any legal argument could be made that someone who qualifies for the War Medal 1939-45 for participating in war service is then not eligible for the Australia Service Medal 1939-45 ...
- b. Secondly, the Royal Warrant specifically recognises service in the "Australian Mercantile Marine". The previous Tribunal has already concluded that Australians who served in the USASS were Australian merchant mariners ...
- c. Third the Royal Warrant also states that "other civilian personnel attached to the Armed Forces in an official capacity for full-time duty in uniform shall also be eligible"...
- d. Fourth, in a document containing information provided by the DHA Directorate and published by the Australian Maritime Safety Authority in October 1996, the eligibility for the Australia Service Medal 1939-45 for Merchant Navy personnel is clearly confirmed.<sup>10</sup>

30. Ms Lynette Ryan provided a written submission on behalf of her father, Mr George William James Inness, who served with the USASS. Ms Ryan requested the Tribunal 'resolve the issue of recognition for service with the USASS in favour of the awards [ASM 1939-45 and ASM 1945-75 with Clasp 'JAPAN'] being issued'.<sup>11</sup> Ms Ryan provided supporting documentation and records from the US National Personnel Records Center substantiating her father's service.

### **The Department of Defence Submission**

31. Defence in its first submission dated 8 August 2013<sup>12</sup> stated that in its opinion, the Royal Warrant 'does not allow issue of the award to personnel who saw service with the United States Army Small Ships Section' and that the Warrant 'is quite explicit regarding who may qualify for the award'.

32. Defence relied on file correspondence dated 2 December 1949 by Mr Thomas Reynolds, a former member of the USASS Section who wrote to the Secretary of the Prime Minister asking whether the new Australian award [the ASM 1939-45] would be issued to

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<sup>9</sup> Submissions 3, 3A and 3B, Mr Ernest Flint, President of the US Army Small Ships Association Inc.

<sup>10</sup> Submission 2, Professor Edgar Gold.

<sup>11</sup> Submission 1, Mrs Lynette Ryan.

<sup>12</sup> Submission 5, Department of Defence, under cover of a letter from General David Hurley AC, DSC to Mr Alan Rose AO.

members of the Section. On 28 December 1949, the Secretary of the Department of Defence advised the Secretary of the Prime Minister's Department that 'as Mr Reynolds' service was with the United States Army Small Ships Section and not with the Australian Defence Forces, it is regretted that he is not eligible for the award of the Australia Service Medal'. This advice was relayed to Mr Reynolds by the Secretary of the Prime Minister's Department.<sup>13</sup> There was no further correspondence on this matter retained on this file.

33. In its second submission dated 10 January 2014<sup>14</sup>, Defence noted the Government's acceptance of the recommendations of the 2009 Inquiry. It was also submitted that 'the original Tribunal Inquiry report mentioned only three campaign medals that were relevant to that Inquiry and available to members of the Navy and Merchant Navy. These were the 1939-45 Star, the Pacific Star and the War Medal 1939-45.' It was also added that 'neither the ASM 1939-45, nor the ASM 1945-75 with Clasp 'JAPAN' was mentioned in the original Tribunal report.' Defence also said that 'the intent of the ASM 1939-45 was to recognise the service of all members of the Australian Armed Forces and the Australian Mercantile Marine during the Second World War. Defence does not support the issue of these awards to Australians who do not meet these criteria.'

34. Defence also went on to state that it does not have a definition of the terms 'Australian Mercantile Marine' or 'Australian Merchant Navy' as these are controlled by agencies responsible for civilian merchant shipping. However, Defence in its interpretation of instruments that authorise awards, such as the ASM 1939-45 Warrant, applies its own definition of Australian merchant shipping as being an element 'that serves as an adjunct to the Australian Armed Forces', and as such, entitles its members to Defence awards.

### **Tribunal Consideration**

35. It is not the purpose of this Inquiry, nor is it consistent with the Terms of Reference, for the Tribunal to reconsider the definitions, outcomes or recommendations accepted by Government that were set out in the report of the 2009 Inquiry, unless a compelling case was put forward. No such case has been presented. As such, taking into account the findings of the 2009 Inquiry and for the purposes of this Inquiry, the Australian civilians who served with the USASS are Australian merchant seamen who are eligible for Australian or Imperial recognition for that service, in accordance with prescribed eligibility criteria, on the same basis as members of the Merchant Navy.

36. To ensure that recommendations it might make would be sustainable, the Tribunal analysed the arguments put forward in various submissions, undertook extensive research and analysed the eligibility criteria set out in the Warrant for the ASM 1939-45. This consideration is set out in the following paragraphs.

#### *Australian Mercantile Marine*

37. The ASM 1939-45 Warrant included the term *Australian Mercantile Marine*. The Tribunal sought to define the meaning or category of persons intended to be covered by that term. There are no particular historical sources that concisely define the lineage of this term.

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<sup>13</sup> NAA: 816, 66/301/251. Letters of 2 December, 28 December, 30 December 1949.

<sup>14</sup> Submission 5A, Department of Defence, under cover of a letter from General David Hurley AC, DSC to Mr Alan Rose AO.

In its research the Tribunal found that the use of *Mercantile Marine* had originated in Britain and it is generally acknowledged that up until the 1920s the term *Mercantile Marine* was in general use to mean civilian seamen (and women) who served in commercial and civilian registered vessels of trade. In 1924, His Majesty, King George V used the term ‘...Our Merchant Navy ...’ in a speech applauding the efforts of British and Commonwealth merchant mariners in the First World War and henceforth, the term *Merchant Navy* came into popular use.

38. On 14 February 1928 the London Gazette published a notice referring to the:

... recognition of the splendid service which the Merchant Navy and Fishing Fleets have rendered to the Empire for many centuries, both in peace and in war.

39. In his 1939 Christmas Day broadcast, His Majesty, King George VI said:

... And when I speak of our Navy today, I mean all the men of our Empire who go down to the sea in ships, the Mercantile Marine, the mine-sweepers, the trawlers and drifters, from the senior officers to the last boy who has joined up.

40. The new term, *Merchant Navy*, made no difference to the role of the former *Mercantile Marine* and use of the terms *Merchant Navy* and *Mercantile Marine* was interchangeable for many years. This was also the case in Australia and is evident in the draft papers developed to support the Defence Committee’s recommendation for the establishment of the ASM 1939-45. The preamble in the draft Warrant referred to the *Merchant Navy* but that was recommended for deletion, to be replaced with *Mercantile Marine*. There are no notations in the file that explain why this amendment was made but it carried forward unaltered into the eventual Warrant<sup>15</sup>.

41. The Tribunal’s research and submissions to the Inquiry did not contradict this interchangeable usage. The Tribunal noted that such interchangeable usage is consistent with Macquarie Dictionary definitions and the terms are used interchangeably in the official records. In addition, the Tribunal found that a 1940 Australian War Cabinet inter-departmental committee report stated that ‘the “Australian Mercantile Marine” is limited in meaning to seamen serving on [*sic*] ships registered in Australia...’.<sup>16</sup> The Tribunal therefore considers that for the purposes of this Inquiry, the term *Mercantile Marine* is synonymous with the terms *Merchant Navy* and *Merchant Marine*. In maintaining consistency with the Warrant, the definition used in the 1940s and the 2009 report, the Tribunal also considers that the “Australian Mercantile Marine” referred to in the Warrant does not refer to a specific organisation, but in the ordinary sense simply means seamen serving on ships registered in Australia.

#### *The ASM 1939-45*

42. In its submission, Defence claimed that the 2009 old Tribunal report mentioned only

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<sup>15</sup> NAA A816 66/301/251 FN9. Report of Principal Administrative Officers 2/49.

<sup>16</sup> NAA A2671 32/1940. War Cabinet Agendum - No 32/1940 - Provision for members of the Mercantile Marine and their dependents in event of death or incapacity in respect of war, Report of the Inter-Departmental Committee dated 5 April 1940.

three Imperial campaign medals, inferring that the ASM 1939-45 was not covered by the Government's acceptance of the report. The Tribunal is not persuaded by this proposition. The recommendation accepted by the Government did not mention any specific awards but instead referred to 'Australian or Imperial recognition', in the broader sense. The ASM 1939-45 was instituted within the Imperial system to recognise, among others, the service rendered by all members of the Australian Mercantile Marine '... who when their country was in danger, answered the call and saw service in their country's defence...'.<sup>17</sup> Notwithstanding its lack of explicit inclusion in the body of the 2009 report, the ASM 1939-45 is undoubtedly 'Australian or Imperial recognition' and is therefore inclusive in the Government's acceptance of the 2009 report recommendations.

43. Defence also submitted that 'the intent of the ASM 1939-45 was to recognise the service of all members of the Australian Armed Forces and the Australian Mercantile Marine during the Second World War'. The Tribunal agrees with that proposition.

#### *Determining Eligibility*

44. **Australian Mercantile Marine.** Defence in its first submission, raised as a basis for not considering the members of the USASS as eligible for the ASM 1939-45, the 28 December 1949 letter of reply to Mr Reynolds by the Prime Minister's Department. The letter advised that since Mr Reynolds's service was with the USASS and not with the Australian Defence Forces, he was not eligible for the award of the ASM 1939-45. The original letter made no reference to Australian members of USASS being Australian merchant seaman or to provisions of the Warrant applying to persons who rendered service in the Australian Mercantile Marine. Instead it presumes that the Australian members of the USASS are uniformed members of an armed service other than the Australian Armed Forces, namely, the US Army. This was an incorrect presumption then, and it remains so now. The Tribunal therefore places no weight on the letter when considering eligibility.

45. Defence, in its second submission referred to how it interprets references to 'Australian Mercantile Marine' or 'Australian Merchant Navy' in instruments authorising awards, including the Royal Warrant for the ASM 1939-45. Defence applies an interpretation that these terms represent 'an Australian merchant shipping element that serves as an adjunct to the Australian Armed Forces'. The Tribunal's view is that such a narrowing of the definition to include the caveat 'serves as an adjunct to the Australian Armed Forces' is in effect applying a limitation where one was never intended by the Warrant, nor is there any justification to do so. As noted at paragraph 24, although provision exists, Regulations have never been made for the ASM 1939-45. Such Regulations could for example define Australian Mercantile Marine for the purposes of the Warrant, as Defence has sought to do informally. However, in the absence of Regulations, and noting that there is no ambiguity in the ordinary meaning of the terms used in the Warrant, the Tribunal does not accept that Defence can read down the term 'Australian Mercantile Marine' in the Warrant by introducing, for its own purposes, such interpretations or restrictive definitions that would preclude the broadest possible constituency being recognised. The Warrant is a beneficial instrument and is to be given the widest effect and broadest interpretation, consonant with its purpose.

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<sup>17</sup> *Commonwealth of Australia Gazette* No. 91 dated 30 November 1949.

46. The Tribunal therefore considers that to qualify as a member of the Australian Mercantile Marine, the members of the US Army Small Ships Section must be Australian seamen, who served in ships registered in Australia. As accepted by the Government in 2009, such persons are 'eligible for Australian or Imperial recognition for that service'.

47. **Eligibility Criteria.** In examining the eligibility criteria set out in the Warrant, the Tribunal sought to understand the meaning of the term '... shall have been served at sea' in relation to the context of eligible service. In keeping with the discussion in the previous paragraphs, and not attempting to read down these words, but instead applying a broad definition, the Tribunal undertook research to discover how such a term might have been used at the time.

48. The Tribunal was unable to find any archival material specifically relating to merchant seamen that would define the term. In the absence of such material and being cognisant of the need to maintain the standing of awards that may have already been made along with the requirement in the Terms of Reference to maintain the integrity of the Australian Honours and Awards System, the Tribunal broadened its research to include how the term might have been used for Royal Australian Navy (RAN) personnel who established eligibility for awards under the Imperial system in recognition of service with the Merchant Navy.

49. The Tribunal found that for RAN personnel serving in Australian merchant ships, Commonwealth Navy Order 400/45 dated 11 September 1945 Section III paragraph 1(A) (c) (i), defined 'service afloat' as 'other seagoing service' including 'service while embarked for duty in merchant ships ...'. Paragraph 1(B) established that service afloat did not include 'service on stationary depot ships which only went to sea when proceeding from port to port such as for the purpose of changing base for refit, service at shore bases and depots, and service in vessels employed wholly or mainly within boom-protected waters or within the limits of smooth waters'. Paragraph 1(C) added that 'service afloat' is 'sea service'.

50. The Tribunal considers that there is a need to avoid ambiguity, to ensure consistency in establishing a comparable level of evidence and to provide equal treatment when considering eligibility for awards made to both Australian civilian seamen and to members of the RAN who served as part of the Australian Mercantile Marine. As such, an appropriately broad meaning of the term 'shall have been served at sea' should have the same normal meaning as 'service afloat', 'seagoing service' or 'sea service' that applied to RAN personnel serving in the Merchant Navy. Therefore to establish eligibility for awards under the Imperial system, including the ASM 1939-45, a member of the Australian Mercantile Marine would need to have 'rendered service while embarked for duty in merchant ships'. Service as described in Commonwealth Navy Order 400/45 Paragraph 1(B) (see paragraph 49 above) would not qualify.

## **Conclusion**

51. After considering all matters, the Tribunal can only reasonably conclude that the Warrant for the ASM 1939-45, Australian recognition instituted under the Imperial system, provides for its award in recognition of service rendered by members of the Australian Mercantile Marine, that is, Australian seamen serving in ships registered in Australia. The Australian members of the USASS who were serving in such ships, between 1942 and 1945, for the prescribed period are therefore eligible for the award of the ASM 1939-45.



## Part I Recommendation

52. The Tribunal finds that members of the USASS who, where eligible should be awarded the ASM 1939-45 and makes the following recommendation:

**Recommendation 1:** Australian seamen who rendered service while embarked for duty in merchant ships registered in Australia, that were operated by the United States Army Small Ships Section between 1942 and 1945, for the prescribed period, should be recognised with Australian and Imperial awards, including The Australia Service Medal 1939-45.

## PART II

### The Australian Service Medal 1945-1975

53. The Australian Service Medal 1945-1975 (ASM 1945-75) is an Australian award instituted by Letters Patent on 22 February 1995. The medal was introduced to recognise members of the Australian Defence Force (ADF) and certain other persons who render service in declared non-warlike military operations. The award of the ASM 1945-75 is governed by the *Regulations Governing the Award of the Australian Service Medal 1945-1975* (ASM 1945-75 Regulations).<sup>18</sup> Further, on 7 June 1995 the Governor-General made a determination relating to the design of the medal, but did not alter the eligibility criteria for the award.<sup>19</sup>

54. Regulation 4 of the ASM 1945-75 Regulations sets out the conditions for the award of the medal. The pertinent conditions are:

#### Conditions for award of the Medal

4. (1) The Medal may be awarded to:
- (a) a member, or former member, of the Defence Force; or
  - (b) a person in a class of persons determined by the Minister for the purposes of these regulations;

who served in connection with a declared operation.

4.(2) The conditions for the award of the Medal are determined by the Governor-General on the recommendation of a Minister.

4.(3) The Medal may only be awarded to a person who fulfils the conditions for the award of the Medal.

4.(4) An initial award of the Medal to a person is made in the form of the Medal with a clasp denoting the declared operation for which the Medal is being awarded.

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<sup>18</sup> *Commonwealth of Australia Gazette* No. S 122 dated 3 April 1995.

<sup>19</sup> *Commonwealth of Australia Gazette* No. S 220 dated 14 June 1995.

55. The term ‘a declared operation’ is defined in regulation 2 to mean ‘an operation in respect of which a declaration has been made under regulation 3’. Regulation 3 authorises the Governor-General, on the recommendation of a Minister, to ‘declare a non-warlike operation, in which members of the Defence Force were engaged at any time during the period that commenced on 3 September 1945 and ended on 16 September 1975, to be a declared operation’ for the purpose of the ASM 1945-75 Regulations.

56. The Governor-General has made a number of declarations, under regulation 3, declaring specific operations as being a non-warlike operation for the purpose of the ASM 1945-75 Regulations. For the purpose of this Inquiry, there is one declaration relating to ADF activities with BCOF in Japan.

### **The Australian Service Medal 1945-1975 with Clasp ‘JAPAN’**

57. The ASM 1945-75 with Clasp ‘JAPAN’ was introduced by the Australian Government in response to a CIDA recommendation in 1994. CIDA recommended the medal’s purpose should be ‘to recognise members of the Australian Defence Force (ADF) who had served with Australian Forces in the occupation of Japan from 3 September 1945 to 30 June 1947, with a qualifying period of 90 days’.<sup>20</sup>

58. The original Instrument of Declaration for the ASM 1945-75 with Clasp ‘JAPAN’ was signed by the Administrator of the Commonwealth on 27 October 1995.<sup>21</sup> This Declaration only allowed for members or ex-members of the ADF to receive the award. Upon representation by the Australian Maritime Safety Authority (AMSA) on behalf of Merchant Mariners, it was later accepted that Merchant Mariners and certain other classes of civilians could be eligible for the award providing they met certain criteria. The 1995 Declaration was revoked and replaced on 18 July 1996, but this Instrument too was revoked by the current version signed on 15 November 1997.<sup>22</sup> The pertinent Regulation states:

#### **Regulation 4(2)(b)**

[I, ...the Governor-General] declare under Regulation 3 of those [ASM 1945-75] Regulations the Australian Defence Force activities with the British Commonwealth Occupation Force in Japan including the waters off Japan to a distance of 161 kilometres to seaward from the coast during the period that commenced on 3 September 1945 and ended on 28 April 1952 to be a declared operation for the purposes of those Regulations;

...

#### **Regulation 4(2)(c)(iv)**

The Medal may be awarded to civilian employees of the Department of Defence, civilian contractors of the Department of Defence, accredited members of the Australian Red Cross, accredited members of the Australian Salvation Army, and members of the Australian Merchant Navy, attached in an official capacity for full time duty with the Australian Military contribution in

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<sup>20</sup> CIDA, p 36.

<sup>21</sup> *Commonwealth of Australia Gazette* No. S 414 dated 27 October 1995.

<sup>22</sup> *Commonwealth of Australia Gazette* No. S 498 dated 1 December 1997.

the declared operation for a period of 30 days, or for periods amounting in the aggregate of 30 days.

59. To be eligible for the ASM 1945-75 with Clasp 'JAPAN', a member must fulfil the conditions specified in both the Regulations to the ASM 1945-75 and also the ASM 1945-75 with Clasp 'JAPAN'.

### **Background to the British Commonwealth Occupation Force**

60. After Japan formally surrendered on 2 September 1945, Britain, Australia, New Zealand and India formed the BCOF to oversee the disarmament and rebuilding of that country. Although some forces were present from the time of the surrender, the main Australian elements arrived in February 1946. These included infantry, medical teams, administrative and labour personnel, Royal Australian Air Force squadrons and two RAN warships. Other BCOF units included a British-Indian division, a New Zealand infantry brigade and a British Commonwealth air component. The United States also deployed an occupation force of considerably larger scale.

61. At its peak, BCOF comprised 40,000 servicemen and women, 11,500 of whom were Australian.<sup>23</sup> From early 1947, the strength of BCOF began to steadily decline such that by 1948, the other Commonwealth nations withdrew their forces leaving just the Australian units. By mid-1949, only 2,630 Australians were serving with BCOF. In late 1951, BCOF was reorganised and its responsibilities handed to Headquarters British Commonwealth Forces Korea (BCFK), and this signalled the end of the occupation. BCOF officially concluded with the ratification of the peace treaty with Japan on 28 April 1952.

62. According to the Australian Official Historian, Dr Robert O'Neill, the activities of BCOF 'related essentially to demilitarisation, disarmament and repatriation of the Japanese forces, control of smuggling and illegal immigration, and Japanese post-war reconstruction'.<sup>24</sup>

63. BCOF was commanded by an Australian Lieutenant General who reported to both the US General, Douglas MacArthur, the Supreme Commander for the Allied Powers based in Tokyo, and to the Joint Chiefs of Staff in Australia.

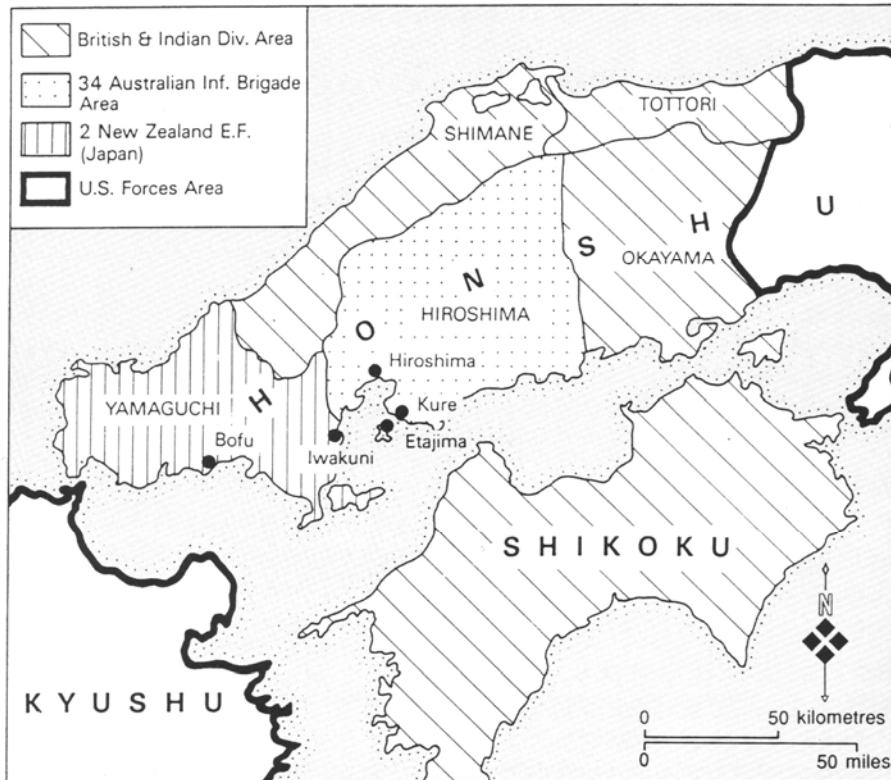
64. In order to fulfil its obligations, BCOF was authorised a specific operational area which was concentrated around the south-eastern most prefectures of Honshu and also the Island of Shikoku. The main city in the region was Hiroshima, still devastated by the atomic bombing. Coastal areas were also defined. Figure 1 shows the BCOF operational area.<sup>25</sup> All other areas of Japan were under US occupation and control.

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<sup>23</sup> Robert O'Neill, *Australia in the Korean War 1950-53, Vol I: Strategy and Diplomacy*, AWM & AGPS, Canberra, 191, p 32.

<sup>24</sup> O'Neill, p 32.

<sup>25</sup> CIDA, p 33.



**Figure 1 – BCOF Operational Area**

### Submissions from the Public

65. Only three of the five submissions received by the Tribunal related to the ASM 1945-75 with Clasp 'JAPAN'. All were in support.

66. Mr Ernest Flint, President of the US Army Small Ships Association Inc., provided a written and oral submission. He submitted that 'Although the 2009 Inquiry confined the medal eligibility to the period 1939-1945 and did not specifically deal with the ASM 1945-75 with Clasp 'JAPAN' it would make even less sense to cut recognised service off in 1945.' He thought it logical that such service should be extended to BCOF. He deferred to the AMSA document which 'clearly included' his members as being eligible for the award. Mr Flint referred to the US Army Form DD214 as adequate proof of a person's service in Japan.

67. In his submission, Professor Gold stated that the eligibility of the US Army Small Ships Section for the ASM 1945-75 with Clasp 'JAPAN' was 'a little less clear' than the case for the award of the ASM 1939-45. He went on to state however, that the reasons used by Defence to disqualify the Section can also be rejected as:

- The old Tribunal Inquiry already settled the point that members were equivalent to members of the Australian Merchant Navy;
- The AMSA document (extract provided) also confirms this;
- A common sense approach should prevail;

- A proper legal interpretation of the Instrument cannot cut off service medal eligibility in 1945 when it had been accepted up to that date; and
- The rules should not be read narrowly.

### **The Department of Defence Submission**

68. Defence submitted that the ASM 1945-75 with Clasp 'JAPAN' is only issued to members or former members of the ADF or to certain classes of person attached to the ADF in an official capacity for duty within the prescribed operation. Members of the US Army Small Ships Section were not connected in any way to the ADF.

69. Defence also completed a search of its records and found that 21 merchant mariners who served have applied for, and been awarded, the ASM 1945-75 with Clasp 'JAPAN'. Defence also provided a useful chart of the list of ships and the periods of Merchant Navy qualifying service for the ASM 1945-75 with Clasp 'JAPAN'. It is included as Appendix 3 to this report.

### **Tribunal Consideration**

70. The Tribunal conducted research into the location and operating area of the USASS Section during the period 3 September 1945 and 28 April 1952 in and around the waters of Japan and found that very little is published. The four published records of their service: *The Raggle Taggle Fleet*,<sup>26</sup> *Forgotten Fleet*,<sup>27</sup> *Forgotten Fleet 2*<sup>28</sup>, and *The Formation and Operation of the US Army Small Ships in World War II*<sup>29</sup> contain little mention of service in Japan. *The Raggle Taggle Fleet* contains some mention of the service of the author, Ladislav Reday, at Yokohama and Tokyo but both locations are outside the BCOF area and in the US Forces area.

71. A review of merchant shipping movements in records held in the National Archives of Australia also failed to find any record of the USASS operating inside the BCOF area. While these records are by no means the complete record of movements in respect of all such ships, they do contain a partial record of the movements of 178 of the 233 US Army Small Ships mentioned in the appendices to the above books, and show evidence of other merchant shipping visiting the BCOF area during the period of occupation. None, however, state that these vessels operated either directly with or were attached to the Australian military contribution to BCOF.

72. The Tribunal next considered the claims made by submitters. The Tribunal found that while there is no dispute that some members of the US Army Small Ships Section served in Japan during the specified period, none could substantiate the claim that they were 'attached in an official capacity for full time duty with the Australian Military contribution' to BCOF. There is no evidence that suggests that the Australian military contribution relied upon the US Army for its support, rather BCOF was a self-contained organisation which provided for its own requirements.

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<sup>26</sup> Ladislav Reday, *The Raggle Taggle Fleet*, San Francisco Maritime Museum, 2003.

<sup>27</sup> Bill Lunney and Frank Finch, *Forgotten Fleet*, Forfleet Publishing, Medowie NSW, 1995.

<sup>28</sup> Bill and Ruth Lunney, *Forgotten Fleet 2*, Forfleet Publishing, Medowie NSW, 2004.

<sup>29</sup> Ernest Flint, *The Formation and Operation of the US Army Small Ships in World War II*, self published, Coomba Park, 2013.

73. Noting that to meet the eligibility criteria of the ASM 1945-75 with Clasp 'JAPAN', a member of the Australian Merchant Navy, must have:

- a. served with BCOF between 3 September 1945 and 28 April 1952; and
- b. served in the prescribed area (see Figure 1);
- c. been attached in an official capacity for full time duty with the Australian Military contribution to BCOF; and
- d. served for a period of 30 days or an aggregate of 30 days.

The Tribunal found no evidence that members of the USASS Section met those criteria.

74. The Tribunal therefore concluded that eligibility has not been established for the award of the ASM 1945-75 with Clasp 'JAPAN'.

## **Part II Recommendation**

75. The Tribunal recommends that members of the US Army Small Ships Section are not eligible for the ASM 1945-75 with Clasp 'JAPAN'.

## **RECOMMENDATIONS**

76. The Tribunal recommendations are as follows:

**Recommendation 1:** Australian seamen who rendered service while embarked for duty in merchant ships registered in Australia, that were operated by the United States Army Small Ships Section between 1942 and 1945, for the prescribed period, should be recognised with Australian and Imperial awards, including The Australia Service Medal 1939-45.

**Recommendation 2:** Australian seamen who served in ships operated by the United States Army Small Ships Section are not eligible for the Australian Service Medal 1945-75 with Clasp 'JAPAN'.

## **APPENDICES**

### **APPENDIX 1 – List of Submissions**

The Tribunal received submissions from the following individuals and organisations:

#### **Name and Organisation (as applicable)**

Mr Ernest Flint, President, United States Army Small Ships Association Inc.

Professor Edgar Gold

Mr Cec Weekes, President, Australian Water Transport Association RAE AIF & RACT  
(NSW Branch)

Ms Lynette Ryan

Mr David Payne

#### **Information was sought and received from the following organisation:**

The Department of Defence

## **APPENDIX 2 – Tribunal Meeting and Hearing Dates and Witnesses**

### **9 September 2013 Meeting**

#### Tribunal Members

Presiding Member: Brigadier Gary Bornholt AM, CSC (Retd)  
Member Dr Jane Harte  
Member Air Commodore Mark Lax OAM, CSM (Retd)

### **14 November 2013 Hearing**

#### Tribunal Members

Presiding Member: Brigadier Gary Bornholt AM, CSC (Retd)  
Member Dr Jane Harte  
Member Air Commodore Mark Lax OAM, CSM (Retd)

#### Witnesses

Ms Helen Gouzvaris, Director Honours and Awards, Department of Defence  
Mr Tony Sillcock, Research Officer, Directorate of Honours and Awards, Department of Defence  
Mr Ernest Flint, President, United States Army Small Ships Association Inc

#### Witnesses (via Teleconference)

Mr Cec Weekes, President, Australian Water Transport Association RAE AIF & RACT (NSW Branch)  
Professor Edgar Gold

### **12 February 2013 Meeting**

#### Tribunal Members

Presiding Member: Brigadier Gary Bornholt AM, CSC (Retd)  
Member Dr Jane Harte  
Member Air Commodore Mark Lax OAM, CSM (Retd)



**APPENDIX 3 - List of ships and the periods of Merchant Navy qualifying service for the Australian Service Medal 1945-75 with Clasp 'JAPAN'**

<b>SHIP NAME</b>	<b>Qualifying Service Period for ASM 1945-75 with Clasp 'JAPAN'</b>
DUNTROON (Troopship)	07 April 1946 – 14 April 1946
	25 August 1946 – 28 August 1946
	31 August 1947 – 5 September 1947
	12 September 1948 – 17 September 1948
	27 December 1948 – 2 January 1949
	11 February 1949 – 17 February 1949
MAITLAND	12 December 1945 – 13 December 1945
MANUNDA (Hospital Ship)	24 March 1946 – 3 May 1946
MERKUR	22 May 1946 – 28 May 1946
	3 July 1946 – 17 September 1946
	8 January 1947 – 18 January 1947
	28 March 1947 – 3 April 1947
	11 August 1947 – 16 August 1947
	11 October 1947 – 19 October 1947
	16 December 1947 – 24 December 1947
	10 March 1948 – 19 March 1948
	14 May 1948 – 20 May 1948
	12 August 1950 – 16 September 1950
RIVER CLARENCE	4 July 1946 – 16 July 1946
	30 September 1946 – 8 October 1946
	16 December 1946 – 26 December 1946
	13 March 1947 – 26 March 1947
	1 July 1947 – 8 July 1947
	15 July 1946 – 24 July 1946
RIVER MITTA	6 October 1946 – 16 October 1946
	5 January 1947 – 14 January 1947
	21 May 1947 – 29 May 1947
	24 July 1947 – 2 August 1947
	27 February 1946 – 10 March 1946
RIVER MURRAY	21 February 1946 – 3 March 1946
	27 March 1946 – 19 April 1946
RIVER NORMAN	21 August 1947 – 23 August 1947
	25 February 1948 – 27 February 1947
SERBOL	12 September 1945 – 11 November 1945
WESTRALIA	24 December 1947 – 30 December 1947
	22 February 1948 – 28 February 1948
	8 April 1948 – 19 April 1948
	1 June 1948 – 8 June 1948
	25 July 1948 – 31 July 1948
	18 September 1948 – 25 September 1948

**APPENDIX 4 – Report of the Defence Honours and Awards Tribunal (the old Tribunal) *Inquiry into the recognition of those who served on United States Army Small Ships***



**Australian Government**

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Defence Honours & Awards Tribunal

**INQUIRY INTO RECOGNITION FOR SERVICE WITH THE UNITED STATES ARMY  
SMALL SHIPS SECTION**

## LETTER OF TRANSMISSION

### INQUIRY INTO RECOGNITION FOR SERVICE WITH THE UNITED STATES ARMY SMALL SHIPS SECTION

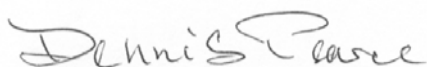
The Hon Dr Mike Kelly AM MP  
Parliamentary Secretary for Defence Support  
Parliament House  
Canberra ACT 2600

Dear Dr Kelly

I am pleased to present the report of the Defence Honours and Awards Tribunal into the recognition for service for Australian civilian personnel who served in the United States Army Small Ships Section between 1942 and 1945.

The inquiry was conducted in accordance with the Terms of Reference. The panel of the Tribunal that conducted the inquiry arrived unanimously at the findings and recommendations set out in its report.

Yours sincerely

A handwritten signature in cursive script that reads "Dennis Pearce". The signature is written in dark ink on a light-colored background.

Professor Dennis Pearce AO  
Chair

26 August 2009

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## **TERMS OF REFERENCE**

On 5 September, 2008 the Parliamentary Secretary for Defence Support, the Hon Dr Mike Kelly AM MP, requested the Tribunal to inquire into recognition for service with the United States Army Small Ships Section during World War II.

The Terms of Reference for the inquiry read:

The Defence Honours and Awards Tribunal shall inquire into and report on the eligibility of Australian civilian personnel who served in the United States Army Small Ships Section, between 1942 and 1945, to receive Australian or Imperial recognition for that service.

The Tribunal is to examine relevant documentary evidence, and consider the nature and context of the service, in relation to the criteria for Australian and Imperial Awards that existed at that time, in order to arrive at a fair and sustainable response to claims for recognition.

The Tribunal is to report to the Parliamentary Secretary for Defence Support on its findings in regard to the above and any recommendations that arise from the inquiry.

In making its findings and formulating its recommendations the Tribunal is required to maintain the integrity of the Australian honours system and identify any consequential impact any finding or recommendation may have on that system.

The Tribunal is to determine its own procedures, in accordance with the general principles of procedural fairness, when conducting its inquiry as set out in these Terms of Reference.

## EXECUTIVE SUMMARY

1. The Defence Honours and Awards Tribunal was established administratively in July 2008. It inquires into, and in its present role makes recommendations to the Government on, matters referred to it by the Government relating to the granting of honours and awards to serving and former members of the Australian Defence Force.
2. The Tribunal may consider individual claims to such medals that have been refused by the relevant awarding authority. It may also consider issues of principle relating to Defence service honours and awards.
3. On 5 September 2008, the Parliamentary Secretary for Defence Support, The Hon Dr Mike Kelly AM MP, requested the Tribunal to inquire into the eligibility of Australian civilian personnel who served in the United States Army Small Ships Section, between 1942 and 1945, to receive Australian or Imperial recognition for that service.
4. This inquiry was undertaken by the following members of the Tribunal:
  - Professor Dennis Pearce, AO (Chair)
  - Mr Adam Bodzioch
  - Vice Admiral Don Chalmers, AO (Retd)
  - Dr Jane Harte
  - Ms Christine Heazlewood
5. The Tribunal received 44 written submissions from members of the public and organisations and took oral evidence from 9 persons.
6. When considering the eligibility of individuals for medallic recognition and the eligibility criteria for the relevant medals, the Tribunal carefully examined the basis on which the medals had been created and the circumstances in which they had been awarded. It paid heed to the integrity of the Australian (formerly Imperial) system of honours and awards and the consequential impact any finding or recommendation might have on that system. In the present context the Tribunal has given particular weight to the principle that recognition of service for the actions of Australians in wartime should, in the ordinary course of events, be provided by Australia.
7. The Tribunal is of the view that the service of the Australian members of the crews of the Small Ships was analogous to the service of members of the crews of Merchant Navy ships. Recognition of that service on the same basis as that for Merchant Navy personnel is therefore appropriate. Service by British Merchant seamen in allied ships qualifies for medallic recognition. The same approach should be applied to the crews of the Small Ships.
8. The Tribunal does not recommend that the award of Australian (Imperial) medals be conditional upon forfeiture of any US medals that the crews of the Small Ships may have been awarded. The Tribunal is not satisfied that the US medals are

the equivalent of the Imperial medals to which the crews would be entitled if its recommendations are followed.

## **RECOMMENDATIONS**

**Recommendation 1:** Australian civilian personnel who served in ships operated by the United States Army Small Ships Section between 1942 and 1945 should be recognised as eligible for Australian or Imperial recognition for that service on the same basis as members of the Merchant Navy.

**Recommendation 2:** There should be no requirement for those personnel to relinquish any US awards that they may have received in respect of their service in the United States Army Small Ships prior to receiving Australian recognition for that service.



## **REPORT**

### **Establishment of Inquiry and Terms of Reference**

1. The Defence Honours and Awards Tribunal was established administratively in July 2008. It inquires into, and in its present role makes recommendations to the Government on, matters referred to it by the Government relating to the granting of honours and awards to serving and former members of the Australian Defence Force.
2. The Tribunal may consider individual claims to such medals that have been refused by the relevant awarding authority. It may also consider issues of principle relating to Defence service honours and awards.
3. On 5 September 2008, the Parliamentary Secretary for Defence Support, The Hon Dr Mike Kelly AM MP, requested the Tribunal to inquire into the eligibility of Australian civilian personnel who served in the United States Army Small Ships Section, between 1942 and 1945, to receive Australian or Imperial recognition for that service.
4. The Terms of Reference for the inquiry read:

The Defence Honours and Awards Tribunal shall inquire into and report on the eligibility of Australian civilian personnel who served in the United States Army Small Ships Section, between 1942 and 1945, to receive Australian or Imperial recognition for that service.

The Tribunal is to examine relevant documentary evidence, and consider the nature and context of the service, in relation to the criteria for Australian and Imperial Awards that existed at that time, in order to arrive at a fair and sustainable response to claims for recognition.

The Tribunal is to report to the Parliamentary Secretary for Defence Support on its findings in regard to the above and any recommendations that arise from the inquiry.

In making its findings and formulating its recommendations the Tribunal is required to maintain the integrity of the Australian honours system and identify any consequential impact any finding or recommendation may have on that system.

The Tribunal is to determine its own procedures, in accordance with the general principles of procedural fairness, when conducting its inquiry as set out in these Terms of Reference.

### **Conduct of the Inquiry**

5. The inquiry commenced on 6 September 2008 with advertisements being placed in the major newspapers nationally giving notice of the inquiry and calling for submissions.

6. At about the same time, the Tribunal wrote to key organisations advising of the inquiry and inviting them to make submissions. The Tribunal also wrote to persons and groups who had previously made representations to the Minister and to the Directorate of Honours and Awards, Department of Defence seeking recognition for service by Australian civilian personnel who served in the United States Army Small Ships Section (Small Ships), between 1942 and 1945.

7. This inquiry was undertaken by the following members of the Tribunal:

Professor Dennis Pearce, AO (Chair)

Mr Adam Bodzioch

Vice Admiral Don Chalmers, AO (Retd)

Dr Jane Harte

Ms Christine Heazlewood

#### *Written Submissions*

8. Forty-four submissions were received from individuals and organisations referred to in Appendix 1. Most of these submissions supported recognition being granted to the persons who served in the Small Ships. However, there were two submissions that opposed such action.

#### *Appearances before the Tribunal*

9. The Tribunal conducted hearings in Canberra and via teleconference on 17 December 2008, 3 April 2009 and 2 June 2009 to hear evidence from the nine persons listed in Appendix 2.

### **Historical Background**

10. The role of the Merchant Navy in wartime is much the same as that in peacetime – the movement of materiel and persons across the oceans and seas of the world. In peacetime, however, the imperative for transporting cargoes is commercial; in wartime it is the support and maintenance of the war effort.

11. In World War II the movement of merchant vessels and the nature and distribution of their cargoes was controlled by the relevant governments to support the war effort. Some vessels were taken directly into government service, the most famous being the hired transports *Queen Elizabeth* and *Queen Mary*. Other ships provided direct support for the armed services in the field of battle. The US Army Small Ships were in this category.

12. A need was perceived by the US Army for small vessels to transport men and materiel in support of its forces in New Guinea and the Pacific Islands. Small vessels would be required to operate in uncharted waters which were studded with concealed shoals, rocks and reefs. The ships had to be small enough to have the shallow draft that would enable them to approach and land men and materiel directly over beaches as the armies did not always operate around convenient harbours.

13. In 1942, General Douglas MacArthur, Supreme Allied Commander South West Pacific Area (SACSWPA), established the United States Army Small Ships Section

(USASS) under the direct command of the US Army. This organisation was in essence SACSWPA's private 'merchant navy'. It ensured that General MacArthur would have access to merchant shipping support without having to compete with the US Navy for priority. USASS was organised and managed by the US Army Transportation Service (USATS) on behalf of SACSWPA.

14. Ships and vessels for USASS were obtained from various sources in Australia. This was done by outright purchase, charter or requisition of suitable ships. The ships ranged in size from small coastal and riverine fishing and trading vessels to larger ocean going and merchant ships, some of 10,000 tons or more. Personnel to crew the fleet were engaged either by direct recruitment by USATS itself or via the US Maritime Administration, which set up offices in Australia to recruit seamen and other personnel for USASS.

15. The Australian civilians recruited were generally either too young or too old to serve in the Defence Forces or were medically unfit for military service. It was necessary for prospective employees to have a 'manpower clearance'. In this regard, the Commonwealth of Australia Manpower Directorate, actively engaged with the prospective recruits to ascertain their willingness to be employed by the US Army in the Small Ships and then provided the required clearances for that to occur.

16. Civilian employees of USATS were engaged under contract to the United States government. Rates of pay were set out in the contract and these, together with the other conditions of service, were markedly more generous than those offered to members of the British Merchant Navy. They were also superior to the pay and conditions of Australian Military personnel serving in Australian Army small ships which performed similar functions to the US Small Ships.

17. The Small Ships flew the US flag for command and administrative reasons and 'carried not only troops, but also ammunition, food and medical supplies, artillery pieces and even towed tanks. They often brought the wounded and dead back to Australia. They were frequently in great danger and endured high casualties.'<sup>1</sup> The small ships were initially utilised in order to support the allied forces in New Guinea areas but later many vessels were also utilised in other zones such as the Philippines<sup>2</sup>.

## **Medals Rules**

18. Medals for service by Australians in World War II were Imperial awards. They were accordingly governed by rules determined by the Monarch on the advice of the British Government. In June 1946, following the end of the War, a United Kingdom committee known as the Committee on the Grant of Honours Decorations and Medals produced a document setting out the conditions for the award of the War Medal, 1939-45, the India Service Medal, 1939-45, the Defence Medal and the various Campaign Stars. This Command document is known as Command (Cmd) Paper 6833 and determined the eligibility of Australian servicemen and women for awards. The Paper was communicated to the appropriate authorities in Australia and was presumably acted upon here.

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<sup>1</sup> Professor Gold, submission dated 12 September 2008 p 3.

<sup>2</sup> *Ibid*, p 4.

19. In December 1948 a document was issued by the Australian Government entitled *Summary of the Conditions of Award of the Campaign Stars, The Defence Medal and The War Medal*. This document is known as the 'Dedman Paper'. The Dedman Paper reproduced Cmd Paper 6833 with only minor alterations to make it referable to Australian circumstances.

20. Cmd Paper 6833 and the Dedman Paper provide for the award of medals to members of the Merchant Navy<sup>3</sup>, substantially on the same grounds and subject to the same conditions as apply to members of the Navy.

21. Relevant to the present inquiry is that three campaign medals were available for award to members of the Merchant Navy as a result of service in the Pacific theatre during World War II.

22. **The 1939-45 Star** was awarded for six months service afloat in areas of active operations from 3 September 1939 to 2 September 1945. This medal was available to members of the Navy and the Merchant Navy, provided that in the latter case at least one voyage was made through a specified area of active operations.

23. **The Pacific Star** was awarded for operational service in the Pacific theatre between 8 December 1941 and 2 September 1945. In relation to the Navy and the Merchant Navy, service would have been in the Pacific Ocean, South China Sea and part of the Indian Ocean. It is also provided that 'Naval and Merchant Navy personnel who served afloat in direct support of land operations prior to 2 March 1945 qualify for the Pacific Star and the prior time qualification of six months will not apply'. The 1939-45 Star must first have been earned for a person to be eligible for the Pacific Star.

24. **The War Medal 1939-45** was awarded to members who served in operational or non-operational service between 3 September 1939 and 2 September 1945. The qualifying period was 28 days. For the Merchant Navy, this qualifying period must have been served at sea.

### **Claim for recognition for service in the Small Ships**

25. The service of Australian seamen who served in the Small Ships has been recognised by the United States Government. Upon application, some of these Australians have received World War II US service medals and awards. These awards are recognised by the Australian Government, as is the right to wear them. However, these seamen have been unsuccessful in receiving recognition for their contributions in the form of Australian or Imperial World War II medals and awards.

26. Mr Ernest Flint (President, The US Army Small Ships Association Inc) and Mr Daryl Smith (Executive Officer, The Australian Merchant Navy Awards Council), more recently supported by Professor Edgar Gold AM QC (University of Queensland), have waged a very long campaign for the Australian Government to recognise the service of those who served in the Small Ships. Recognition has been denied primarily on the basis that the seamen were serving in US ships as US seamen and are therefore not entitled to Imperial or Australian recognition for their service.

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<sup>3</sup> A term which is used interchangeably with 'Mercantile Marine' and 'Mercantile Navy' in the relevant medal rules.

## **Arguments supporting the claimants**

27. The principal basis of the claim for recognition is made by drawing an analogy between the service of those seamen who served in the Small Ships and the service of members of the Merchant Navy.

28. In essence, it is submitted that members of the Merchant Navy serving in allied ships during World War II were entitled to Campaign Stars and Medals under the same qualifying conditions as members of the Navy. Further, these members of the Merchant Navy were also able to gain recognition from the respective countries in whose ships they sailed. It is asserted that these awards were in addition to, not in lieu, of their Imperial Awards.<sup>4</sup>

29. Against this background, it is submitted that the Australians serving in the US Small Ships performed similar work and were subject to similar risks and hardships as those serving in vessels attached to the Merchant Navy. It is claimed that the Small Ships crews were sometimes at greater risk given that there were questions about the 'seaworthiness' of some of the small craft in which they served. Further, it is argued that the personnel serving in the Small Ships were in greater danger than many merchant seamen because of the hazardous nature of the supply activities that they were called on to undertake.

30. In short, it is claimed that the Australians serving in the US Small Ships should be treated in a like manner to members of the Merchant Navy in respect to medallic recognition and that, in addition to their US recognition, they should receive recognition from the Australian Government.

## **Arguments not supporting the claimants**

31. [ The Tribunal received one confidential submission in opposition to recognition of Australians serving with the US Small Ships.]T

32. – 35.

36. The second opposing submission was provided by Lieutenant General D.J. Hurley, Vice Chief of the Defence Force on behalf of the Department of Defence (Defence). The position taken by Defence consistently over many years can be summarised thus: the members of the Small Ships section were not members of the Australian services or Merchant Navy and, accordingly, have no eligibility for Australian awards. Further, their service was with the US Army, their ships flew the US flag and they were paid by the US government. Their contracts with USATS confirm their status as civilian contractors, not servicemen.

37. In its submission, Defence states 'Australians who were contracted by the USATS during World War II were ineligible for the suite of Imperial World War II campaign stars and medals. This suite of medals was instituted vide Cmd Paper 6833. While the regulations promulgated by Cmd Paper 6833 allow for the issue of Imperial awards to Allied and other foreign nationals commissioned and enlisted in

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<sup>4</sup> Gold Submission p 8. But cf rule 4(iv) of DOCD G24 set out at paragraph 42, below.

the British forces, the reverse does not apply. Service with an Allied force was expected to be recognised by that Allied force.<sup>5</sup>

38. The Defence submission goes on to say that the United States administration has confirmed that Australian civilians serving with USASS are eligible for the relevant United States World War II medals on application to the United States Government. Further, the Defence submission indicates that the Australian Government recognises United States medals awarded under these circumstances and contends that this thereby validates their status as equivalent to the Imperial awards given for World War II service.

39. Finally, Defence rejects the position of the Australian personnel serving with USATS who claim that they were Australian seamen serving in Australian ships and were therefore merchant mariners.

### **Dominion Office Circular**

40. During the course of the inquiry, the Tribunal's attention was drawn to *Dominions Office Circular despatch G No 24* of 28 June 1947 (DOCD G24). (It is to be noted that this document came into existence after Cmd Paper 6833 referred to above.) The Circular indicated that His Majesty the King had approved certain rules in respect to 'British Merchant Seamen' serving on Allied ships which were not on charter to His Majesty's Government in the United Kingdom. In essence, that document sought to provide recognition not previously given for British merchant seamen serving on allied ships during World War II. Further research, conducted on behalf of the Tribunal in London at the National Archives, provided copies of the minutes of the deliberations of the Treasury Committee involved in the drafting of DOCD G24. Those minutes were helpful in confirming that the Circular was designed to provide for the recognition of service by British seamen in allied ships. The minutes indicate that the recognition was to be additional to that afforded merchant seamen by Cmd Paper 6833.

41. A subsequent paper issued by the UK War Office, *War Office 68/General/8533, 11 June 1948*, refers to this extended eligibility for merchant seamen.

42. Most significant for the present inquiry is paragraph 4 of DOCD G24. That reads:

Service by a British seaman in an Allied ship, although not on charter to the United Kingdom Government, may be accepted as qualifying service for the award of the Campaign Stars and the War Medal 1939-45, provided

(i) That the seaman was engaged with the consent or approval of the United Kingdom Government, (e.g., the Merchant Navy Pool and His Majesty's United Kingdom Consuls);

(ii) That the seaman produces satisfactory evidence of such service;

(iii) That the ship on which the service was performed was running in the Allied war effort;

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<sup>5</sup> Submission dated 29 September 2008, Annex A, p 1.

(iv) That the seaman has not accepted, and will not be permitted to accept, equivalent Allied general awards in respect of any service during the war.

43. The Tribunal has sighted documents indicating that DOCD G24 was brought to the attention of relevant offices in Australia. It was in circulation in Australia before the publication of the Dedman Paper.

44. The Tribunal sought comments from Defence on DOCD G24 and its implications for the claims being made for recognition by those who served in the Small Ships.

45. A formal response was received from Lieutenant General Hurley. In addition, Mr Pat Clarke and Mr Graham Wilson appeared before the Tribunal on 17 December 2008 to provide further information in this regard. The Tribunal acknowledges their assistance in exploring varying interpretations and options posed by the Tribunal.

46. Defence maintained its position that there is no means open in the Imperial system of honours and awards to recognise the Australian seamen who elected to serve with a foreign defence force. Despite the reference in paragraph 4 of DOCD G24 being only to a 'British seaman', Defence pointed to preliminary words in the Circular that referred to 'British **Merchant** Seamen' (emphasis added). Defence asserted that this reference qualified the later more general reference to British seaman. Australians formerly employed by the USATS could not demonstrate that they were 'British Merchant Seamen'.

47. Further, even if this could be demonstrated to be the case, eligibility extended by DOCD G24 was conditional only and former Australian employees of USATS remained ineligible for Imperial awards as they could not meet the conditions at paragraphs 4(i) and 4(iv) of the rule set out in DOCD G24.

48. The Defence interpretation of 'British Seamen' in DOCD G24 is that it refers to articulated, indentured or otherwise officially recognised members of the British Merchant Navy. In Defence's view, this means that, to satisfy the requirements of paragraph 4 of DOCD G24, the seaman needed to have been engaged in accordance with s 46 of the *Navigation Act 1912* (Cth). That section provides that the master of a ship who engages any seaman in Australia shall enter into an agreement in the prescribed form with the seaman. No master is to carry any seaman engaged in Australia to sea without having entered into such an agreement. However, the Tribunal notes that the section does not impose any obligation on the seaman to enter into such an agreement. Rather the obligation is on the master.

49. Defence also asserted that, to satisfy the requirements of being a British Merchant seaman where the ships were engaged in the type of service performed by the Small Ships, the seaman had also to be engaged under a 'T124 Agreement' (*Auxiliary War Vessels Instructions to Commanding Officers Regarding Engagement and Discharge of Merchant Navy Seamen*). The Instructions state 'All Merchant Navy Officers, including those granted temporary R.N.R. commissions, and men selected by you or on your behalf will be required to sign an agreement with the Admiralty (T124) in the presence of the Superintendent of the Board of Trade, Mercantile Marine Office. Under this agreement they will contract to serve in the

vessel for the period specified and agree to be subject to the Naval Discipline Act for the duration of their individual engagements.’<sup>6</sup>

50. The Defence submission then goes on to say that ‘As ships taken up and utilised by the USATS fit the category of “Auxiliary War Vessel”, for Australian mariners contracted for service on these ships to be recognised as “British Merchant Seamen”, they would have been required to enter into T.124 Agreements.’<sup>7</sup>

### **Consideration of arguments and conclusions**

51. The Tribunal considers the point relating to T124 Agreements made by Defence to have little merit. Australian civilians serving with USATS signed contracts with that organisation after clearances from the Commonwealth Government. They were not serving in ‘auxiliary war vessels’ to which the Instructions applicable to T124 Agreements related. The persons who served in the Small Ships were not wanted by the Navy as they were unfit, too old or too young. They were cleared by the Manpower Directorate as not being in an ‘essential occupation’. They did not sign T124 agreements because, like the majority of Australian Merchant seamen during World War II, the Agreements were not applicable to their service.

52. In respect to the argument that seamen must be employed under the Navigation Act to qualify as British Merchant Seamen, the Tribunal notes that the Act provides a definition of seaman as “seaman” means a person employed or engaged in any capacity on board a ship, except the master of the ship, a pilot and a person temporarily employed on the ship in port’.<sup>8</sup> There is no definition or reference in the Act to a ‘British’ seaman and, accordingly, the crew could come from any country.

53. Nor does the definition of seaman limit itself to those persons who have entered into the agreement referred to in s 46 of the Navigation Act. As noted above, the obligation under the Act to enter into such an agreement is placed on the master of the ship, not the seaman. The Act specifically recognises that everyone who serves in a ship is a seaman. This is not made dependent upon entering into a prescribed agreement.

54. At the time when USASS was created, Australian ships were registered as British ships under the *Merchant Shipping Act 1894* (UK) (MSA) as in force in Australia. As the Tribunal understands the position, a British ship retained that attribute unless and until it was sold to a person who was not entitled to register it as a British ship, it was registered in another country or it was lost or broken up. A ship did not cease to be a British ship by dint of being chartered to a non-British person. The MSA makes it an offence to fly a flag other than the red ensign on a British registered ship but does not suggest that the ship thereby loses its status as a British ship.

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<sup>6</sup> Further Defence Submission dated 29 October 2008 p A2.

<sup>7</sup> Further Defence submission p A2.

<sup>8</sup> Section 6.



55. During World War II, the use of Australian ships was controlled through the operation of various National Security Regulations<sup>9</sup>. Ships (other than Navy ships) were not to proceed to sea without the licence of first the Minister and later the Shipping Board established by those Regulations. Ships could only be transferred with the consent of the Board.

56. It is arguable from this (and is so put on behalf of the crews of the Small Ships) that, where a ship was chartered or requisitioned by the US Army without change of ownership, the Australian seamen who served in it continued to serve in a British ship, albeit one chartered or being used by another government. The fact that it flew a US flag was an administrative and tactical convenience driven by the wartime situation. It did not mean that the ship itself ceased to be British.

57. It is also relevant to this issue that the crew of the Small Ships were British citizens as Australia did not have Australian citizenship at that time. All Australians were British citizens.

58. In the Tribunal's view, a strong case can be mounted that the Australian seamen who served in the Small Ships were 'British Merchant Seamen' as referred to in DOCD G24. If this is correct, the crews of the Small Ships that were chartered rather than bought by USATS would seem to satisfy the rules for eligibility for awards applicable to persons who served in the Merchant Navy.

59. The position is more complicated for the crew to qualify for consideration under DOCD G24, where the ships had been sold to the United States Army. An argument is put that the general reference to 'British seaman' in paragraph (i) of the rule in DOCD G24 must be read down by the reference in the earlier part of the Circular to British Merchant Seamen. It is said that this means that the paragraph is applicable only to seamen who were part of the British Merchant Navy. The persons who served in Small Ships that were not British owned and registered could not fall within this description.

60. The counter-argument to this is that the reference to 'British seaman' in what are described as the 'rules' relating to the award of medals should not be read narrowly. Medals rules are beneficial legislation and such legislation is to be given the widest effect consonant with its purpose. Nor should the words of the rules be read down by reference to words that do not appear in the rule itself. The reference to 'British seaman' is not ambiguous and there is no reason to have regard to the earlier reference to British Merchant Seamen.

61. Further, a narrow interpretation of the rules would lead to what might be considered an unreasonable result in that, if the argument set out above is correct, crew who at any time during the War served in Small Ships that remained in British ownership would qualify for medals but those who served only in other vessels would not. An interpretation that leads to a result that seems unreasonable is to be resisted.

62. If this approach were taken, the reference to British seaman in the rules would have to be interpreted as being concerned only with nationality. The Australians who

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<sup>9</sup> See, for example, the National Security (Shipping Control) Regulations SR 275/1940; SR 20/1941; the National Security (Shipping Requisition) Regulations SR 230/1941; National Security (Shipping Co-ordination) Regulations SR 86/1944.

served in the Small Ships were undoubtedly British and they were seamen. As they served in Allied ships, they would satisfy the requirement of the rules as set out in DOCD G24.

63. The Tribunal sees force in the argument for adopting this broad interpretation of the rules included in DOCD G24 thereby making the crews who served in Small Ships operated by USATS eligible for Imperial awards. As indicated above, it is also persuaded that a strong case can be made for the crews of Small Ships chartered to USATS qualifying for medals under the existing rules.

64. However, the Tribunal considers that it is not necessary for it to come to a final conclusion on what are essentially difficult legal questions. It considers that an appropriate outcome can be reached by a different route.

65. The Tribunal is considerably influenced in reaching its conclusion by the principle, enunciated by officers of the Department of the Prime Minister and Cabinet before the Tribunal, that recognition of service for the actions of Australians in wartime should, in the ordinary course of events, be provided by Australia.

66. The Tribunal notes that Cmd Paper 6833 and the Dedman Paper extended the eligibility for awards usually available only to members of the Australian Defence Force to those who served in the Merchant Navy. DOCD G24 then took this further to include service in Allied ships.

67. The Tribunal can see no difference in the nature of the contribution to the war effort provided by the crews of the Small Ships and the crews of the Merchant Navy. Both groups of personnel provided an essential support to those engaged in active service against the enemy. Both groups were exposed to considerable danger and suffered casualties. The fact that the crews of the Small Ships were employed under pay and other conditions that were more favourable than those in the Merchant Navy or the Australian Army small ships does not detract from the nature of their service. The eligibility of the crews of the Small Ships for US awards attests to the significance of the contribution made by their service.

68. It does not seem to the Tribunal that it is appropriate that the efforts of this small group of Australians should continue to pass unmarked by their own country. The Tribunal accordingly considers that members of the crews of the Small Ships should be recognised for appropriate awards on the same basis as members of the Merchant Navy.

69. The Tribunal has been conscious of the direction to it that it should maintain the integrity of the Australian honours system in any recommendation that it makes for an award. The Tribunal is not aware of any other Defence Force personnel who would be able to cite the recognition recommended as a precedent for an award to them.<sup>10</sup>

70. Further, the Tribunal is of the view that recognition of the service by those who served in the Small Ships confirms the principle that Australian awards should be used to recognise honourable service by Australians in the defence of Australia.

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<sup>10</sup> Examples provided to the Tribunal by Defence are not affected because of the limited nature of the Tribunal's recommendations.

71. The Tribunal notes Defence's position that paragraph 4 (iv) of DOCD G24 qualifies the eligibility of members of the Small Ships for British awards. That subparagraph provides that an award can be made to a British seaman provided 'that the seaman has not accepted, and will not be permitted to accept, equivalent Allied general awards in respect of any service during the war.'

72. Following US Government confirmation that Australian civilians serving with USATS would be eligible for US awards, and the Australian Government's recognition of those awards, some Small Ships seamen have applied for and received US awards. The Department of the Prime Minister and Cabinet has advised the Tribunal that the US medals that have been awarded to those seamen are the 'US Victory Medal' and the 'US Pacific War Zone Bar'.<sup>11</sup>

73. Defence contends that this disqualifies them from taking the benefit of DOCD G24. It says that the US awards are equivalent in status to the Imperial awards.

74. On the information provided to the Tribunal, the US Victory Medal may be equivalent to the War Medal 1939-45 and the US Pacific War Zone Bar may be equivalent to the Pacific Star. No medal equivalent to the 1939-45 Star has apparently been awarded to crew members of the Small Ships.

75. However, the Tribunal has not been provided with any details of the basis for eligibility for these US awards. It is therefore not possible for it to make a comparison between the conditions for the award of the Imperial medals and the US medals to determine whether they can properly be described as 'equivalent'.<sup>12</sup> There is also some argument that the US Merchant Marine awards should, in fact, be regarded as civilian awards as opposed to military awards.

76. In these circumstances it is not possible for the Tribunal to conclude that the Imperial awards which the Tribunal recommends should be awarded to the crews of the Small Ships are equivalent to the US awards that some of those members have obtained. There is therefore no case made that, if the Tribunal's recommendation that the crews of the Small Ships be awarded Imperial medals is accepted, this should be made conditional upon the return of any US medals that members of the crews may have obtained.

## Recommendations

**Recommendation 1:** Australian civilian personnel who served in ships operated by the United States Army Small Ships Section between 1942 and 1945 be recognised as eligible for Australian or Imperial recognition for that service on the same basis as members of the Merchant Navy.

**Recommendation 2:** There should be no requirement for those personnel to relinquish any US awards that they may have received in respect of their service in the United States Army Small Ships prior to receiving Australian recognition for that service.

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<sup>11</sup> Submission dated 24 September 2008, p 1.

<sup>12</sup> A term which in itself is ambiguous.

## APPENDICES

## **Appendix1 – Submissions**

The Tribunal received submissions from the following people and organisations:

(Note: names have not been released as submissions were received in confidence)

Multiple submissions were received from some people and organisations.

## **Appendix 2 – Tribunal Hearings**

### 23 October 2008

Chair: Professor Dennis Pearce

Members: Ms Christine Heazlewood, VADM Don Chalmers, Mr Adam Bodzioch,  
Dr Jane Harte

### 17 December 2008

Chair: Professor Dennis Pearce

Members: Ms Christine Heazlewood, VADM Don Chalmers, Mr Adam Bodzioch,  
Dr Jane Harte

Witnesses:

Mr Pat Clarke

Acting Director Honours and Awards  
Department of Defence

Mr Graham Wilson

Staff Officer Policy Research – Directorate of Honours and Awards

### 3 March 2009

Chair: Professor Dennis Pearce

Members: Ms Christine Heazlewood, VADM Don Chalmers, Mr Adam Bodzioch,  
Dr Jane Harte

### 3 April 2009

Chair: Professor Dennis Pearce

Members: Ms Christine Heazlewood, VADM Don Chalmers, Mr Adam Bodzioch,  
Dr Jane Harte

Witnesses:

Professor Edgar Gold AM

Adjunct Professor – University of Queensland

Mr Ernest Flint MBE ED

President

US Army Small Ships Association Inc

Mr Daryl Smith

Executive Officer

Australian Merchant Navy Awards Council

Mr Pat Clarke  
Acting Director Honours and Awards  
Department of Defence

12 May 2009

Members: Ms Christine Heazlewood, VADM Don Chalmers, Mr Adam Bodzioch,  
Dr Jane Harte

2 June 2009

Chair: Professor Dennis Pearce  
Members: Ms Christine Heazlewood, VADM Don Chalmers, Mr Adam Bodzioch,  
Dr Jane Harte

Witnesses:

[Witnesses appeared in confidence] - (Teleconference)

Peter Rush  
Assistant Secretary, Awards and Culture Branch, Department of the Prime Minister  
and Cabinet

Glenn Gore Phillips  
Adviser, Honours Policy and Operations, Awards and Culture Branch, Department of  
the Prime Minister and Cabinet

28 July 2009

Chair: Professor Dennis Pearce  
Members: Ms Christine Heazlewood, VADM Don Chalmers, Mr Adam Bodzioch,  
Dr Jane Harte

### **Appendix 3 - Written Sources consulted by the Tribunal**

#### **Archival sources:**

#### **National Archives of Australia – Canberra repository**

##### **Series A2/1**

1920/1591 Letters to all states regarding taking over 'Mercantile Marine or Shipping Master's office'

##### **Series A432**

1929/3977 Navigation Act: re S.S. Niagara - Effect of High Court Judgment

##### **Series A816**

66/301/291 Campaign stars - war medals - file number 5

##### **Series A2863**

1935/30 Part 2 Navigation Act Bill (No 2) 1935

1943/1 Navigation Act 1942

#### **National Archives of Australia – Melbourne repository**

##### **Series MP1**

1/1/379 Application to transfer to USASOS [United States of America Services of Supply]. Small Supply Ships Service

##### **Series MP138**

603/246/4876 Motor Vessel Jane Moorhead - Disposal

##### **Series MP278**

J1/1 USAFIA – Transportation Service

J2/1 USAFIA – requisitioning – general

##### **Series MP508**

323/701/841 Manning of Small Ships (USA and Australian) operating in the Pacific Area



### **Series MP729**

59/401/3666 Procedure to be Adopted re requisitioning of Ship for United States or Australian Services

### **Series MP742**

D/1/2185 Dale, A. R. Application for medical treatment after discharge from American Small Ships Section

81/1/108 Eligibility for Africa Star – Policy thereon

81/1/194 Award of British Campaign Stars and Medals to British Merchant Seamen

### **Series MP981**

448/201/2292 Australian paper issued by the Minister for Defence containing a summary of the conditions of award of Campaign Stars, Defence Medal and War Medal [Contains photocopy of booklet Committee on the Grant of Honours, Decorations and Medals]

## **National Archives of Australia - Sydney repository**

### **Series SP958**

Corinda 1937 Agreement and List of the Crew

Klang 1911 Agreement and List of the Crew

## **Australian War Memorial**

### **Official Records**

#### **Series AWM52**

4/2/5 Commander's diary 2/5th Field Regiment November 1942

#### **Series AWM54**

963/22/7 [Transport - Sea (Allied) - Small Ship Coys and Small Ship Log Books:] Discipline - Australian Citizens serving on small ships under contract to United States Army, April 1943 - Protective custody (Milne Force) order 1942, Crews of American trawlers, Nov 1942

#### **Series AWM69**

23/16 Merchant Ship Losses – War bonuses and extra war risk pay strikes and holdups

## **Series AWM124**

41/80 US Army operated vessels

## **Private Records**

PR 3DRL/5048 A. J. Carfax-Foster Papers

## **The National Archives, Kew, UK**

### **Series MT 9**

- 4853 Awards (Code 6): Campaign Star and War Medal 1939-1945, Consideration of service by British seamen in Allied and neutral ships not on charter to His Majesty's Government. (and attached file)
- 5180 Awards (Code 6): Honours – War Medals – Campaign Stars - enquiries and applications. (and attached file)

### **Series T 300**

- 15 Defence medal, campaign stars and General Service medal; HW 3701-HD 3759
- 24 Defence medal, campaign stars and General Service medal; eligibility of Allies and other foreign nationals; HW 3423-HD 5846
- 26 Campaign stars and Defence medal: HW(B)
- 38 Eligibility of Allied and foreign nationals for UK campaign stars and medals; awards to Belgians
- 40 Proposed War Service Medal: Eligibility
- 41 Proposed War Service Medal: Eligibility
- 42 Proposed Defence Medal
- 43 Proposed Defence Medal
- 67 Australian Service Medal

### **Internet sources**

Account of Walter Rignold Marshall - <http://patriot.net/~eastlnd2/rj/swpa/marshall.htm>  
downloaded 2 Sep 08

Account of Keith Oliver - <http://patriot.net/~eastlnd2/rj/swpa/stories.htm#tsol>  
downloaded 2 Sep 08

Account of Ken Shearer, MV Nanigai -  
<http://nanagai.blogspot.com/2006/06/chapters-one-to-three.html>  
downloaded 4 September 2008

### **Secondary sources**

David Horner, *The Gunners*, St Leonards: Allen and Unwin, 1995

Bill Lunney and Frank Finch, *Forgotten fleet : a history of the part played by Australian men and ships in the U.S. Army Small Ships Section in New Guinea, 1942-1945*, Medowie, Forfleet Publishing, c.1995

Bill Lunney and Ruth Lunney, *Forgotten fleet 2: an updated and expanded history of the part played by Australian men and ships in the U.S. Army Small Ships Section in New Guinea, 1942-1945*, Medowie: Forfleet Publishing, 2004

Ladislav Reday, *The Raggle Taggle Fleet*, San Francisco: Maritime Museum, 2003