

CHAPTER ONE

INTRODUCTION

- 1-1 The Defence Honours and Awards Appeals Tribunal (the Tribunal) is established under the provisions in Schedule 1 of the *Defence Legislation Amendment Act 2010 [No. 1]* [Cwlth], which came into effect on 5 January 2011. Before that date, many of the functions of the Tribunal were undertaken by the Defence Honours and Awards Tribunal (the old tribunal), which operated administratively from July 2008. The Defence Legislation Amendment Act contains the provisions for the establishment of the new Defence Honours and Awards Appeals Tribunal (the new Tribunal, or the Tribunal), as well as specifying its membership, powers and functions. The Tribunal's functions are set out in s. 110UA of the *Defence Act 1903* [Cwlth]. The Minister may direct the Tribunal to hold an inquiry into a specified matter concerning Defence honours or awards. The Tribunal must then hold an inquiry and report, with recommendations, to the Minister.
- 1-2 On 21 February 2011 the Parliamentary Secretary for Defence, Senator The Hon. David Feeney, referred the matter of Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour to the Tribunal. The Terms of Reference for the Inquiry into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour (the Inquiry), as agreed on 29 April 2012, are set out in full at the commencement of the *Report of the Inquiry into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour* (the Report).
- 1-3 The Tribunal comprised the following members:
- Emeritus Professor Dennis Pearce, AO (Chairman until 20 June 2011)
 - Mr Alan Rose, AO (Chairman from 26 September 2011)
 - Professor David Horner, AM (also Presiding Member from 20 June to 25 September 2011)
 - Vice Admiral Don Chalmers, AO (Retd)
 - Brigadier Gary Bornholt, AM, CSC (Retd)
 - Air Commodore Mark Lax, OAM, CSM (Retd).

Declaration of conflict of interest

- 1-4 No conflicts of interest were declared.

Background to the Inquiry

- 1-5 At an estimates hearing of the Senate Standing Committee on Foreign Affairs, Defence and Trade on 19 October 2010, Senator Guy Barnett (Liberal, Tasmania) raised the question as to why no member of the Royal Australian Navy (RAN) had been awarded the Victoria Cross (VC), and suggested that several individuals should be considered for the award. The Chief of the Defence Force, Air Chief Marshal Angus Houston, initially resisted this approach because retrospectivity 'creates all sorts of follow-on difficulties'. When pressed, he stated that 'we

will let the Honours and Awards Tribunal have a look at it'.¹ In the course of the discussion, six personnel were mentioned.

Navy personnel:

- Lieutenant Commander Robert Rankin (HMAS *Yarra* — February–March 1942)
- Ordinary Seaman Edward Sheean (HMAS *Armidale* — December 1942)
- Lieutenant Commander Henry Stoker (AE2 — April 1915)
- Captain Hector Waller (HMAS *Perth* — February–March 1942).

Army personnel:

- Gunner Albert Cleary (Sandakan — 1945)
- Private John Simpson Kirkpatrick (Gallipoli — April–May 1915).

1-6 In November 2010, Air Chief Marshal Houston directed the Chief of Navy to develop a submission and identify potential candidates for review by the Tribunal. As a result, the following naval personnel were identified in addition to the original six:

- Midshipman Robert Davies (HMS *Repulse* — December 1941)
- Leading Cook Francis Emms (HMAS *Kara Kara* — February 1942)
- Lieutenant David Hamer (HMAS *Australia* — January 1945)
- Able Seaman Dalmorton Rudd (HMS *Vindictive* — April 1918)
- Leading Aircrewman Noel Shipp (RAN Helicopter Flight Vietnam — May 1969)
- Lieutenant Commander Francis Smith (HMAS *Yarra* — February–March 1942)
- Leading Seaman Ronald Taylor (HMAS *Yarra* — February–March 1942)

1-7 In February 2011, the Deputy Secretary Defence Support and the Chief of Navy forwarded a brief to the Chief of the Defence Force covering a ministerial submission that contained the names of former Defence Force personnel whose actions and recognition might be subject to review.²

1-8 On 12 February 2011 Air Chief Marshal Houston advised the Parliamentary Secretary for Defence, Senator Feeney, that the most prudent course would be for Senator Feeney to write to the Chair of the Defence Honours and Awards Appeals Tribunal 'inviting him to consider an investigation into individual Navy cases of valour, and because it was difficult and unwarranted to seek unique treatment for Naval personnel ... the inquiry should involve a wider review of potential VCs'.³ An attachment to the submission listed the 13 names. In a follow-up question at the Senate estimates hearing on 23 February 2011, Senator Barnett asked if the matter had been referred to the Tribunal, and on what date. Senator Barnett was advised that the matter had been referred to the Tribunal, and that this had occurred 'just in the last few days'.⁴

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

2 The sequence of events in Defence is described in the attachment to letter, General DJ Hurley, CDF, to Chair, Defence Honours and Awards Appeals Tribunal, 20 September 2012.

3 Ministerial Submission, 'Defence response to public calls for retrospective awards of the Victoria Cross for Navy personnel'. Air Chief Marshal A Houston to Senator D Feeney, 12 February 2011.

4 Senate Foreign Affairs, Defence and Trade Legislation Committee, Additional estimates, 23 February 2011, pp. 75–77.

- 1-9 As noted above (paragraph 1-2), on 21 February 2011, Senator Feeney formally referred the matter of 'unresolved recognition for past acts of naval and military gallantry and valour' to the then Chair of the Tribunal, Emeritus Professor Dennis Pearce, and the Tribunal received a letter with draft terms of reference on 23 February 2011 for consideration.
- 1-10 At a preliminary meeting on 16 March 2011, the Tribunal considered and proposed amendments to the draft terms of reference for the Inquiry. These were forwarded to Senator Feeney who added an extra requirement, namely that the Tribunal was to receive submissions supporting the recognition of acts of gallantry or valour performed by other members of the Defence Force. Senator Feeney approved the Terms of Reference, and on 16 April 2011 issued a media statement advising that the Tribunal would be conducting the inquiry and that advertisements were being placed in the media giving notice of the inquiry and calling for submissions. The Terms of Reference were formally sent to the Tribunal on 29 April 2011.

Conduct of the Inquiry

- 1-11 Also at the meeting on 16 March 2011, the Tribunal decided that the Inquiry would need to:
- conduct its own research, including in archives in Australia, the United Kingdom and the United States;
 - receive submissions from family members of the 13 personnel listed in the Terms of Reference, the public, government departments and veterans' organisations;
 - conduct public hearings to seek further information from those people and organisations making submissions; and
 - review the personal files of the nominated servicemen.
- 1-12 At the 16 March meeting the Tribunal further decided that it would be necessary to test and scrutinise carefully all the evidence presented to it in the oral and written submissions. Accordingly, the Tribunal requested that advertisements be placed in the press inviting submissions. The Tribunal also directed its staff to undertake research, both on the individual cases and the general matter of the awarding of honours for gallantry. In this regard, an independent researcher, Mr Anthony Staunton, was contracted to prepare a factual paper setting out the rules and history concerning the awarding of honours for valour.
- 1-13 As noted above (paragraph 1-3), Professor Pearce completed his term as Chair of the Tribunal on 20 June 2011. The Acting Chair of the Tribunal, Ms Heazlewood, was not directly involved in the work of this Inquiry, which was chaired in an acting capacity by Professor Horner. The Tribunal's research continued, but it was not able to begin the formal hearing of submissions until after the new Chair, Mr Alan Rose, took up his appointment, and took over as chairman of this Inquiry, on 26 September 2011. The gap between Professor Pearce's retirement and Mr Rose's appointment imposed an unfortunate delay on the Tribunal's proceedings.
- 1-14 Submissions closed on 30 June 2011, and the Tribunal received 56 written submissions from individuals and interested organisations by this date. The

Tribunal also received 76 submissions relating to claims concerning individuals other than those named in the Terms of Reference. The Tribunal received further submissions after the closing date, and these were accepted by the Tribunal. By the end of the Inquiry the Tribunal had received 166 submissions relating to its major Terms of Reference; the organisations and individuals who made these submissions are listed at Appendix 1. The Tribunal also received 174 submissions relating to claims concerning individuals and groups other than those named in the Terms of Reference.

1-15 In August 2011, the Tribunal wrote to the Department of the Prime Minister and Cabinet (PM&C), the National President of the Returned & Services League of Australia (RSL) and the Director of the Australian War Memorial to seek their views. Between July and December 2011, the Tribunal also wrote to the Navy League of Australia, the state presidents of the RSL and the HMAS *Perth* Association advising of the Inquiry and inviting them to make either a written or oral submission. The Naval Association of Australia had previously provided a written submission.

1-16 The Tribunal wrote to the Department of Defence on four occasions during the course of the Inquiry to gather evidence and seek clarification of some issues.⁵ These were:

- on 4 October 2011 — seeking evidence from those in Defence involved in the nomination and consideration of contemporary operational awards, and inviting Defence personnel to a hearing on 9 November 2011;
- on 8 December 2011 — following the appearance by Defence representatives at the public hearing on 1 December, seeking specific information on the origins of the selection of the named personnel in the Terms of Reference;
- on 19 April 2012 — acknowledging receipt of the Defence submission and seeking clarification of a range of issues raised in the submission. It also requested that a number of Defence personnel appear at the public hearing in Canberra; and
- on 6 September 2012 — acknowledging the appearance of the Chief of Navy and other Defence representatives at the 31 May hearing and following up on the information requested at the hearing.

Responses were received from Defence following each request.

1-17 During the course of the Inquiry, the Tribunal wrote to PM&C on two occasions, 15 March and 7 June 2012⁶, and to the Australian Government Solicitor on 30 July 2012 seeking clarification of several issues. Responses were received to these requests.

1-18 The Tribunal conducted hearings in Canberra on 9 November and 1–2 December 2011, in Melbourne on 14–15 December 2011, in Launceston on 16 December 2011, in Sydney on 8–9 February 2012, in Adelaide on 14 February 2012, in Perth

⁵ Formal correspondence between the Chair of the Tribunal and the Chief of the Defence Force. In addition, there were multiple e-mail exchanges between the Tribunal secretariat and staff from Defence.

⁶ Formal correspondence between the Chair of the Tribunal and the Assistant Secretary of the Awards and Culture Branch (March); and between the Chair of the Tribunal and the Secretary of the Department of the Prime Minister and Cabinet (June). There were two earlier letters from the Tribunal secretariat to the Assistant Secretary of the Awards and Culture Branch on 17 August and 14 November 2011.

on 15 February 2012, in Brisbane on 13 March 2012, in Canberra on 14–15 March 2012 and again in Canberra on 31 May 2012, to hear evidence from various individuals and organisations. A total of 72 individuals and organisations made oral submissions to the Tribunal. Appendix 2 provides details of the Tribunal hearings and the persons who appeared at those hearings.

- 1-19 The Tribunal considered additional supporting material including archival and departmental records, personal files, eyewitness reports and comments from former key office-holders and experts such as former governors-general, former prime ministers, former Defence chiefs, leading historians, medal experts and social commentators. The list of those so consulted is set out in Appendix 3.

Analysis of the task

- 1-20 The Tribunal noted that under its Terms of Reference it was directed to make recommendations on the eligibility of the naval and military members, as listed, to be awarded the VC, the VC for Australia or other forms of appropriate recognition for their gallantry or valour.⁷ The Tribunal considered that before it could make recommendations on the eligibility of the 13 cases for any form of retrospective or revised recognition, it would need to understand the constitutional and legal background to the making of Defence honours and awards, and also rules, procedures and principles relating to making the awards of the VC, the VC for Australia, and other forms of appropriate recognition, and the standards of evidence that would be required.
- 1-21 Each of the Australian prerogative instruments establishing Australian Defence honours, on its face, neither confines its application to actions or service occurring after its execution nor prohibits it being applied retrospectively (i.e. the instruments establishing these largely discretionary honours neither specifically provide for retrospective awards nor prohibit them).
- 1-22 By contrast, those prerogative instruments that created Australian Defence awards that are largely non-discretionary, provide specifically for the periods of service that are necessary for an individual to be eligible for each of these awards. It is these objectively determinable criteria that define and set apart one award from another. In this respect they are fundamentally different in character from Australian Defence honours, where much is left to the subjective judgement of commanders at the varying levels who consider whether an individual should be recommended for an honour (for a discussion of the differences see paragraphs 2-6 and 2-7).
- 1-23 The Tribunal noted that under the common law of Australia, Acts including Legislative Instruments, etc., are not to apply retrospectively unless there is a clear indication in the legislation to the contrary.⁸ Nevertheless, the courts do seem to have interpreted what have been referred to as 'beneficial' provisions of Acts more broadly, having regard to the fact that they are intended to remedy a

⁷ Recipients of both the [Imperial] Victoria Cross and the Victoria Cross for Australia are entitled to the post-nominal 'VC'. Throughout this report, the abbreviation VC refers to the Victoria Cross awarded under the Imperial system, while VC for Australia refers to the Victoria Cross for Australia.

⁸ DC Pearce & RS Geddes, *Statutory interpretation in Australia*, 7th edn, LexisNexis Butterworths, Chatswood, NSW, 2011, pp. 322–323.

perceived injustice or provide a new benefit to the persons to whom they apply, through retrospective application, unless this is inconsistent with the provisions of the Act taken as a whole.⁹

- 1-24 As Pearce and Geddes note, these common law presumptions and their exceptions have been largely codified and applied under the *Acts Interpretation Act 1901* (Cwlth).¹⁰ The Tribunal has proceeded on the basis that the *Acts Interpretation Act 1901* (Cwlth) applies to the Australian Defence honours and awards instruments.¹¹
- 1-25 The Tribunal noted that this Inquiry, with its particular Terms of Reference, was established in large measure in response to claims of alleged injustices suffered by each of the 13 individuals named, through the failure of the relevant authorities to recognise each of them during periods when the Imperial honours and awards system alone applied. Already, on a number of occasions since the Australian honours and awards system completely replaced the Imperial system (October 1992), Australian governments have recommended the making of Australian honours to recognise actions and service that occurred before 1992 (for a full discussion see paragraphs 6-15 to 6-17).
- 1-26 After conducting thorough research, the Tribunal accepts that Australian Defence honours have been awarded to remedy what the government considered to be past injustices. These retrospective applications of the prerogative instruments establishing the Australian honours and awards system made in the public interest have been seen as not only benefitting the individuals concerned but also as determiners of the distinctive character of the Australian honours and awards system.
- 1-27 The Tribunal has reached the view, therefore, that it is not precluded from applying the provisions of the prerogative instruments establishing the Australian honours and awards system to the circumstances of each of the 13 individuals named in the Terms of Reference. The Tribunal would therefore see it as satisfying the meaning of 'beneficial' to be able to recommend an honour in cases where there is the need to right a wrong from the past.¹²
- 1-28 The Tribunal also considered that if its examination of the rules and procedures determined that it would be possible to recommend retrospective or revised levels of recognition, it would still need to decide whether it was desirable for the government to do so insofar as it would impact upon the integrity of the Imperial and Australian honours and awards systems, and the standing of those Defence honours and awards already made.
- 1-29 Notwithstanding whether the rules allowed for retrospective or revised recognition, and whether it was desirable for such retrospective recognition to be given, the Tribunal accepted that, in accordance with its Terms of Reference,

⁹ Pearce & Geddes, *Statutory interpretation in Australia*, pp. 289–295.

¹⁰ *ibid.*, p. 345.

¹¹ *Acts Interpretation Act 1901* (Cwlth) s. 46.

¹² If the Tribunal's judgement (that the Regulations of the VC for Australia and other Defence honours may be applied retrospectively) is incorrect, the Tribunal notes that it would be open to the Australian Government to recommend appropriate amendments to each of the prerogative instruments to provide for their retrospective application in line with the decisions or recommendations already made by governments of both major political parties.

it was required to examine and report specifically on its views about each of the 13 individuals named.

- 1-30 Since the establishment of the Commonwealth of Australia in 1901, broadly speaking, there have been two types of processes for the review of government decisions or actions — judicial review, to ensure legality and that proper processes had been followed, and merits review, either through political or administrative processes.¹³ The legality of a decision could be tested in an action brought in the courts. In such actions, the courts are not able to concern themselves with the merits of a decision. Rather, their review powers are limited to whether the decision-maker acted fairly within their powers and according to law. So long as the court judged that the decision-maker had made a valid decision, it is not able to overturn a decision even though it might think that the original decision was not the preferable one in the circumstances. On the other hand, the merits of a decision could be questioned by recourse to the various parliamentary and political processes, and, in more recent decades, in special tribunals established by legislation. In both judicial and merits reviews, an important aspect common to both is whether the process followed by the original decision-maker complied with the law.
- 1-31 When the Administrative Appeals Tribunal was established, it was empowered, among other things, to substitute its decisions for those of the primary decision-maker and to exercise all the powers of the primary decision-maker. But its powers were no greater than those of the primary decision-maker, and it could not make a decision that the primary decision-maker could not make. Within a more limited area of Australian Government decision-making, the Defence Honours and Awards Appeals Tribunal has been given a somewhat similar merits review jurisdiction.¹⁴
- 1-32 The Tribunal recognised that in undertaking this Inquiry it was required to exercise its 'inquiry' function under Division 3 of Part VIIIIC of the Defence Act, and not its 'review' function under Division 3 of that part of the Act. That is, it was not reviewing a reviewable decision but was conducting an inquiry into the matters contained in the Terms of Reference. A review is commonly referred to as a 'merits review', and an aspect of such a review will be a review of the process by which the decisions were made in order to determine what the correct and preferred decisions should now be. The inquiry is inquisitorial in nature, involving a broad range of 'fact-finding' and the making of recommendations in regard to those findings. Although this may involve an examination of what has occurred previously, including decisions that may have been made previously, the inquiry function is not normally in the nature of a 'merits review'.
- 1-33 Nonetheless, in referring the matter of the 13 individuals to the Tribunal, the government has in effect directed the Tribunal not just to inquire into all of the relevant records, but to consider and report on whether the claims for recognition of each of the 13 had been treated fairly within the applicable law, practice and procedures applying to the relevant honours and awards, or whether some other

¹³ This paragraph is based on 'The Commonwealth administrative review system', Butterworths Service 70: *Australian administrative law service*, Butterworths, Sydney, 1979, pp.1701–1721.

¹⁴ The *Defence Act 1903*, s. 110UA.

honour or form of recognition would have been a preferable acknowledgement of the various acts of gallantry or meritorious service of these individuals. Therefore, while recognising the difference between conducting an inquiry and a review, the Tribunal concluded that the framework of a merits review was the most helpful way to proceed.

1-34 The Tribunal considered that in carrying out its Inquiry it was being asked to review fully the merits of what had been done in each of the 13 cases. The first step in this Inquiry was to look at the processes that had been applied when each of the individuals was first considered for an honour. This 'process review' would question whether what was done in each case was legally and procedurally valid in the context of the times, and whether proper processes had been followed in the case of each individual. In other words, the Tribunal was being asked to determine whether the relevant decision-making process had been properly undertaken, or whether there was the basis for finding that there had been a case of maladministration (see the discussion in paragraphs 8-44 and 8-45) resulting in manifest injustice.

1-35 Once satisfied about the validity of the original processes followed, the Tribunal considered that it was being asked to go further and complete all aspects of a full merits review of each case. In doing so, it noted in particular what Professor Peter Cane of the Australian National University has said about the extent of a merits review, which

is conducted not on the basis of the relevant facts as they were at the date the primary decision was made, but on the basis of the relevant facts at the date of the review (in other words, the record remains open until the date of review and the reviewer can receive new evidence that was not available to the primary decision-maker). Under certain circumstances, the merits reviewer can even take account of changes in the law since the original decision was made.¹⁵

In carrying out such a merits review, the Tribunal would need to consider the actions of the 13 individuals named in the Terms of Reference, and either apply standards of the day or contemporary standards, and consider all available past and recent evidence, to determine what honours, if any, they should have been awarded in preference to the course of action adopted at the time.

Approach applied in this Inquiry

1-36 Noting that a full merits review includes a process review, for the purposes of this Inquiry the Tribunal approached its task by considering the cases of the 13 individuals in two steps — first, a process review; and second, a merits review that, for the purposes of this Inquiry, focused, as much as the evidence allowed, on what actually happened in the relevant military action.

1-37 The Tribunal noted that 9 of the 13 individuals (Cleary, Davies, Emms, Hamer, Simpson Kirkpatrick, Rudd, Sheean, Stoker and Waller) had already been awarded honours. If the Tribunal were to recommend another honour, it would be making

¹⁵ Peter Cane, 'Judicial review and merits review: comparing administrative adjudication by courts and tribunals', in Susan Rose-Ackerman and Peter L Lindseth (eds), *Comparative administrative law*, Edgar Elgar Publishing, Cheltenham, UK, 2010, p. 434.

a judgement on decisions made by past commanders who had recommended the original honours. The Tribunal would, in effect, be looking to set aside those original recommendations. With regard to the individuals who had not received honours (Rankin, Shipp, Smith and Taylor), the Tribunal was being asked to make recommendations based on information and evidence that might not have been gathered in the manner normally undertaken when recommendations for honours were made at the time. The Tribunal decided that it would need to determine whether it had the capacity to make such judgements, and whether it was wise to do so.

- 1-38 The Tribunal, therefore, has interpreted its Terms of Reference as a clear direction from the government to undertake such inquiries to the best of its ability and with the information available to it. The Tribunal also noted that in recent times the government had been willing to support such merits reviews in other cases. For example, the *Review of recognition for the Battle of Long Tan: March 2008*, chaired by Major General Peter Abigail (the Abigail Review) recommended that Major HA Smith, and two of his officers, who fought in the Battle of Long Tan and whose original recommendations for honours had been downgraded in-country by the Commander Australian Force Vietnam (COMAFV), should be upgraded to equivalent honours in the Australian honours and awards system.¹⁶ The Abigail Review stated that it was guided by a desire to rectify a case of 'clear anomaly or manifest injustice', claiming that, while COMAFV legitimately recommended particular awards, 'Commanders could not know whether the battle was a singular event, or a portent of similar actions'.¹⁷ In effect, the Abigail Review undertook a merits review and recommended overturning a decision made by the competent commander at the time, despite the fact that the procedures applying at the time were followed correctly. PM&C has identified the Abigail Review as an example of the government acting on a recommendation of a review to replace past Imperial awards with higher Australian awards.¹⁸

Additional names

- 1-39 In accordance with the Terms of Reference and the Parliamentary Secretary's statement of 16 April 2011, the Tribunal was directed to receive submissions recommending recognition for service personnel other than the 13 cases it had been directed to review. The Tribunal decided that it would need to acknowledge, record and analyse these submissions, and report on the detail of each additional name in them, to allow the government to determine whether a proposal for recognition should be received and referred to the Tribunal for review. (See Chapter 25)

16 Department of the Prime Minister and Cabinet, *Review of recognition for the Battle of Long Tan: March 2008*, PM&C, Barton, ACT, 2008.

17 *ibid.*, paragraph 5.1.

18 Letter, Renee Leon, Deputy Secretary Department of the Prime Minister and Cabinet, to Chair, Defence Honours and Awards Appeals Tribunal, 2 July 2012.

Guidelines

- 1-40 This analysis of the task led the Tribunal to the conclusion that it should develop guidelines for undertaking the process and merits reviews. These are set out in paragraph 8-48.

Selection of the named individuals

- 1-41 Before proceeding with the Inquiry, the Tribunal considered that it needed to find out why the 13 named individuals had been selected. As noted in paragraph 1-5, 6 individuals (Cleary, Kirkpatrick, Rankin, Sheean, Stoker and Waller) had been mentioned in the Senate Standing Committee in Foreign Affairs and Trade on 19 October 2010. Further, as described in paragraph 1-6, the Chief of the Defence Force (CDF) had directed the Chief of Navy to identify other candidates for review, and this resulted in the inclusion of Davies, Emms, Hamer, Rudd, Shipp, Smith and Taylor.
- 1-42 In the course of the Inquiry, the Tribunal was advised that following the CDF's direction to the Chief of Navy, the RAN Sea Power Centre – Australia prepared a list of additional Navy members who might be considered for the award of the VC through the Inquiry process. The Department of Defence stated that the basis for the additional names 'was an awareness of individuals whose names had periodically been advanced by ex-Service organisations, family members, authors, academics, politicians or other interested parties'.¹⁹ The Navy did not make a submission in support of any one of these names nor, despite being asked by the Tribunal, did it produce any representation to the government or Department of Defence seeking recognition for any of these names. When pressed, the Navy stated that not all the submissions had 'been written' (i.e. they were oral).²⁰ Subsequently, the Department of Defence advised that it could find no representations with respect to Davies, Emms, Hamer, Rudd or Shipp, but that it had received 'a small number of representations seeking recognition on behalf of the former ship's company of HMAS *Yarra*', including Smith and Taylor.²¹
- 1-43 The Tribunal subsequently found that in the case of some of these individuals, family members had indeed been lobbying for them to be considered for a VC. In other cases, family members were completely surprised to find that the individual's name had been put forward. The announcement that their family member was to be considered raised expectations, and stirred emotions that had not previously been present.²²

19 Submission 235 — Chief of the Defence Force, 14 March 2012.

20 Oral submissions by the Chief of Navy and the Seapower Centre, Public Hearing Canberra, 31 May 2012.

21 Attachment to letter, General DJ Hurley, CDF, to Chair, Defence Honours and Awards Appeals Tribunal, 20 September 2012.

22 The Tribunal heard this evidence during the oral submissions of Mr David Amos (a nephew of Robert Davies) in Canberra on 2 December 2011, Mr Clement Rankin (a nephew of Robert Rankin) in Sydney on 8 February 2012 and Mrs Amanda Rawlin (granddaughter of Francis Emms) in Sydney on 9 February 2012.

Structure of the Report

- 1-44 To meet the various tasks set out in the Terms of Reference, this report has been divided into three parts: Part One, General considerations; Part Two, Individual cases; and Part Three, Other nominations from members of the public.



PART ONE GENERAL CONSIDERATIONS



CHAPTER TWO

IMPERIAL AND AUSTRALIAN HONOURS SYSTEMS

2-1 The practice of bestowing honours and awards for outstanding service, gallantry and participation in military campaigns has existed for many centuries, but the practice only became widespread in European countries in the nineteenth century. Australia draws its tradition of Defence honours and awards from Britain, which issued its first formal campaign medal, the Waterloo Medal, in 1815, and its first gallantry medal, the Distinguished Conduct Medal, in 1854. Australia's system of Defence honours and awards is of much more recent origin; it began to be put in place in 1975, but drew heavily on the Imperial system.

Use by Australian Armed Forces

2-2 Australian service personnel have received honours and awards under two systems — the Imperial system and the Australian system. The Imperial system was used by Australia until February 1975, when the Whitlam government introduced the Australian system. The two systems — the Imperial and the Australian — then operated in parallel until October 1992, when Prime Minister Paul Keating announced that Australia would no longer make recommendations for Imperial awards. The Prime Minister said that this bipartisan and Commonwealth and state advice had been submitted to the Queen, who had agreed.¹ As a consequence, Imperial honours made to Australians since 1992 are now regarded as foreign awards.²

Categorising Imperial and Australian honours and awards

2-3 Over the years honours and awards have generally been divided into several distinct groups. These are:

- Orders of chivalry or merit. These include Imperial orders such as the Order of the British Empire and, under the Australian system, the Order of Australia.
- Crosses and medals for gallantry or distinguished service in war or conflict, or for bravery or conspicuous service in time of peace. These are sometimes called decorations.
- All other awards, not being an order or a decoration, including:
 - medals for war service, more commonly known as campaign or service medals and stars
 - medals for long service and good conduct
 - commemorative medals

1 Letter to Her Majesty by Prime Minister Paul Keating 19 June 1992. Provided by Peter Rush, Assistant Secretary, Honours, Symbols and Territories Branch, PM&C, to Chair, Defence Honours and Awards Appeals Tribunal, 18 April 2012. The letter is initialled by Her Majesty as approved.

2 'The order of wearing Australian honours and awards' states that 'all Imperial British awards made to Australian citizens after 5 October 1992 are foreign awards and should be worn accordingly'. *Commonwealth Gazette* no. S192, Friday 28 September 2007, p. 1. The sequence of approvals for the Australian awards is set out in Appendix 5.

- badges
- other awards.

2-4 Unfortunately, the terms ‘honours’ and ‘awards’ have been used interchangeably in much of the writing about decorations. For example, the Australian Government website, ‘It’s an Honour’, refers to ‘honours’ and includes the awards of honours within the Order of Australia as well as the VC for Australia. However, it then goes on to describe how members of the public might nominate someone for an ‘award’ in the Order of Australia. Another example is the *Defence honours and awards manual*, which states that:

there are many types of honours and awards available to recognise outstanding achievements by Defence military and civilian personnel ... these include honours within the Australian honours system such as awards for gallantry, distinguished service, conspicuous service, bravery and the appointments and medal within the Order of Australia. In addition there are many internal Defence awards, including commendations.³

Australian Defence honours and awards

2-5 The amendments to the Defence Act, and Regulations that led to the establishment of the Tribunal, (*Defence Legislation Amendment Act [No. 1] 2010* [Cwlth] [Amendment Act], Defence Force Amendment Regulations 2011 [No. 1] [Cwlth], and particularly Schedule 3) now clearly define Defence honours and awards. ‘Defence honours’ include honours made in recognition of some special act or service, ranging from the VC for Australia to a Commendation for Distinguished Service. By contrast, ‘Defence awards’ are made for the completion of service for a specific time and (in some cases) in a specifically designated area; these range from the Naval General Service Medal 1915–1962, through to the Australian Active Service Medal and the Australian Defence Medal. Honours within the Order of Australia (including the Military Division) are not ‘Defence’ honours or awards within the definition of the Amendment Act and Regulations.⁴ Similarly, other awards such as the National Medal, for which some Defence personnel are eligible, are not Defence awards because they are the responsibility of other portfolios such as the Department of the Prime Minister and Cabinet in this case.

2-6 The important difference between ‘Defence honours’ and ‘Defence awards’ is that the former are discretionary (although some objective elements must be present, considerable subjective judgements are also called for) and are recommended through the chain of command, while the latter, for the most part, are awarded if one meets very specific criteria as specified in the relevant Regulations, with very little room for any discretion to be exercised. Thus, individuals can apply for an award if they believe that their service met the criteria of the appropriate Regulations.

³ Department of Defence, *Defence honours and awards manual*, vol. 1, Department of Defence, Canberra, 3 September 2012, chapter 5. This manual was published towards the end of the Inquiry. Before that time, the Tribunal based its understanding of the Defence honours and awards on several Defence Instructions (General), which have now been superseded by the manual.

⁴ Awards within the Military Division of the Order of Australia can be used to recognise operational service as an alternative to a Defence honour.

- 2-7 By contrast, an individual does not 'apply' for an honour. From the beginning of the Imperial system, honours were bestowed by the Sovereign upon recommendation of commanders. An individual needed to be nominated for an honour, and even if the individual was nominated there was no guarantee that a higher authority would approve it. In short, Defence honours were awarded by the Sovereign as a result of recommendations from within the Defence Force. Inevitably, one individual might receive an honour for a noteworthy act, while another individual who performed a similar act might not receive an honour purely because they were not nominated.
- 2-8 A significant additional change made by the Amendment Act was, as part of the introduction of a statutory review process, to allow an individual to apply to the Defence Department for a Defence honour. If the application were to be refused, the applicant could then apply to the Tribunal for that refusal to be reviewed. In such cases the Tribunal may endorse the Defence decision 'not to recommend', or make its own recommendation to the Minister as it considered appropriate.

CHAPTER THREE

CONSTITUTIONAL ISSUES AND AUSTRALIAN SOVEREIGNTY

- 3-1 The arrangements by which Australians received honours and awards under the Imperial system for about a century before 1992 (also followed in other dominions, such as New Zealand and Canada) need to be understood in the context of the development of Australian sovereignty. Contrary to much public misconception, the Commonwealth of Australia did not become an independent sovereign nation at Federation on 1 January 1901. Rather, at that point, the new Commonwealth joined the other six British colonies (now referred to as states) to govern Australia with certain important legislative, executive and judicial powers reserved to the British head of state, the British Parliament and the Privy Council. That is, Australia was a self-governing entity within the British Empire, and this constitutional and legal position prevailed from 1901, through the First World War, until the beginning of the Second World War.
- 3-2 A series of Imperial Conferences in London, after the experiences of the Great War, resulted in the Balfour Declaration of 1926, which, among other things, provided that the United Kingdom and the dominions were to be considered as 'autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations.' That is, as a self-governing dominion, Australia became part of the British Commonwealth of Nations rather than the British Empire. In 1931 the British Parliament passed the *Statute of Westminster 1931* (UK), which established legislative equality for the self-governing dominions of the British Empire with the United Kingdom. Australia, however, failed to accept the statute until 1942 (backdated to 3 September 1939).¹ Even then there were provisions, which, at the request of the states, excluded them from the Westminster reforms and allowed them to technically remain British colonies — unlike the provinces of Canada, which were fully independent.
- 3-3 In 1949 the word 'British' was dropped from the British Commonwealth and the organisation became known as the Commonwealth of Nations, or more commonly as the Commonwealth. Australia also made changes to emphasise its independence. By the *Royal Style and Titles Act 1953* (Cwlth), the Australian Parliament gave the Queen the title Queen of Australia, and in 1973 that Act was amended to remove from the Queen's Australian style and titles any reference to her status as Queen of the United Kingdom and Defender of the Faith, although Elizabeth II, with her British style and titles, remained the Sovereign with respect to each state.
- 3-4 With respect to another clear indication of nationhood, in September 1901, the Commonwealth Parliament selected a design for two Australian flags from over

¹ Throughout the process of negotiating the Statute of Westminster, the six Australian states successfully opposed its application to them. Hence, unlike Australia, constitutionally and legally the states remained British colonies, despite the passing of the *Statute of Westminster Adoption Act 1942* (Cwlth).

30,000 competition entries — one with a blue ground for official use, the other with a red ground for merchant ships. But it was not until the passage of the *Flags Act 1953* (Cwlth) that the Australian Parliament determined that the Australian flag with a blue ground that had been selected in 1901 was the Australian national flag. This Act was assented to by the Queen personally in 1954, ending a controversy that had run until then, with many in government over the intervening 50-year period maintaining that the national flag was the Union Jack and the red and blue competition winners were mere colonial flags. The *British Colonial Laws Validity Act 1865* and considerable other executive, legislative and judicial decisions and trappings of the British Empire continued to apply to the Australian states (although not to the territories) until the *Australia Act 1986* (Cwlth), *Australia Act 1986* (UK) and associated legislation came into effect on 3 March 1986, when all Australian governmental entities became independent from the United Kingdom, with one head of state, the Queen of Australia.

- 3-5 Further, until the *Nationality and Citizenship Act 1948* (Cwlth) came into effect in 1949, being a British subject was the relevant discriminator for all purposes of population identification in Australia, and not Australian citizenship. People born in Australia or coming from other parts of the British Empire were in effect 'Australian Britons'. Aliens coming to Australia and wishing to remain could be naturalised as British subjects.² It was only after the Second World War that 'member country citizenships' were for the first time to be superadded to British subjects in Commonwealth countries' legislation. The Nationality and Citizenship Act established Australian citizenship which became further separated from the older Imperial notions of what it meant to be a British subject, and progressively was more rigorously and narrowly defined in subsequent amendments to Australian citizenship legislation from the late 1960s onwards.

Australian armed forces and Australian sovereignty

- 3-6 The constitutional development of Australian sovereignty had particular implications for the armed forces. For example, within a decade after Federation, arrangements had been put in place for ships of the newly formed RAN to serve under the British Admiralty in time of war; this occurred in both world wars.
- 3-7 The new Australian Army was also developed, under British guidance, so that its units could fit seamlessly into British formations in time of war. Thus, in both world wars, Australian Army units and formations were deployed overseas and, although commanded by Australians, they operated principally under British commanders-in-chief.
- 3-8 During the Korean War, the Malayan Emergency and Confrontation, units from the three Australian services served under a level of British command. With Australian units operating under British command or as part of a British-led coalition, it was natural that Australian military personnel should receive Imperial honours in line with the then existing British practice, procedures and standards.
- 3-9 The Vietnam War created an anomaly because although Australia was involved, Britain was not. Australian military personnel still received Imperial honours

² Helen Irving, *To constitute a nation*, Cambridge University Press, Melbourne, 1997, p. 31.

largely in line with the 'inherited' British practices, procedures and standards, including a quota arrangement under the Imperial system.

- 3-10 To Australians living in the twenty-first century, these arrangements might seem to have been an abrogation of sovereignty; but a century earlier most Australians were comfortable with the duality of being Australians and British subjects. It was not until 1949 that Australian citizenship was established. This attitude, which placed great importance on membership of the British Empire, persisted until well into the second half of the twentieth century.
- 3-11 Against this background, the Tribunal considered that it had to be careful about applying present-day values to issues which, if viewed through contemporary Australian eyes, past Australian governments might have been seen to allow the British Government an undue measure of influence over the allocation of honours to Australian service personnel. Further, the Tribunal needed to consider the rules and administrative process for awarding the Victoria Cross and other gallantry honours under the Imperial honours and awards system before considering the rules applying under the Australian system. This consideration is necessary before any judgement can be made about whether it is possible or desirable to make retrospective awards or to revise the level of awards previously made.

Australian community attitudes

- 3-12 The previous section briefly outlined why Australian military personnel were awarded honours under the Imperial system, and why this was not seen as an abrogation of Australian sovereignty. Reinforcing and supporting the constitutional and legal status quo were the attitudes of the majority in the Australian community, which, until the middle of the twentieth century, largely comprised people of Anglo-Celtic heritage. Australia had strong ties to Britain and many Australians still spoke about Britain as 'home', even if they had never lived there. However, attitudes towards Australia's relationship with Britain changed markedly over the last 40 years of the twentieth century. When Britain applied to join the European Economic Community in 1960, many Australians believed that Britain had walked away from its special relationship with Australia. (In fact, Britain was not initially permitted to join the Common Market, and did not do so until 1972.) Another factor was Britain's decision in the late 1960s to withdraw militarily from 'east of Suez'. In addition, many of the migrants to Australia in the 1950s (as part of a huge post-war immigration program) came from non-English-speaking countries and had no connection with Britain.
- 3-13 The Whitlam government, elected in December 1972, was determined to express a greater level of Australian independence. This was manifested partly in the decision to change the Queen's title, as well as through the government's institution, on 14 February 1975, of the Order of Australia, the Australian Bravery Decorations and the National Medal. Successive Australian governments continued this approach, as has been mentioned earlier (e.g. the Fraser government introduced Defence Force Service Awards in 1982 and the Hawke government introduced new Defence operational and non-operational awards in 1986).

- 3-14 Another expression of a change in community attitudes was the formation in July 1991 of the Australian Republican Movement, after the Australian Labor Party adopted republicanism as a policy at its June 1991 national conference. Although opinion polls showed that many Australians favoured becoming a republic, divisions emerged in the movement between those who favoured indirect election of a president by Parliament, and those who favoured direct election by the people. This led to Australian voters rejecting at a referendum in 1999 a constitutional amendment to introduce a specific form of republic described by some as the 'minimalist' model. Nonetheless, compared with the enthusiasm for Royal visits in the 1950s and 1960s, the low-key nature of the Queen's visits to Australia in the past 20 years would seem to indicate a change in Australian attitudes towards Britain and the monarchy.
- 3-15 Further changes in community attitudes can be seen in relation to the Australian Government's promotion of Anzac Day, and, more broadly, of Australia's experience of war, as a means of helping Australians to understand who they are and why Australia has developed the way that it has.³ The 75th anniversary of Gallipoli celebrations in 1990 and the 'Australia Remembers' year of 1995 are two examples of such government-sponsored activities. The Tribunal does not wish to enter into the debate about such government programs, but merely to observe that alongside that activity, governments have responded to an increasing desire for recognition by approving a series of medals including the Australian Sports Medal (1999), the Humanitarian Overseas Service Medal (1999), the 80th Anniversary Armistice Remembrance Medal (1999), the Anniversary of National Service 1951–1972 Medal (2001), the Centenary Medal (2001), the Australian Defence Medal (2006), the National Emergency Medal (2011) and the Operational Service Medal (2012). Once the Australian honours and awards system had been introduced, successive governments found it relatively easy to add another medallic award to the list of those already approved. There was no need to try to fit any new proposed medal within an Imperial system.
- 3-16 There appears to be a greater desire for recognition than in previous generations — a trend reinforced by the growing number of sports medals, literary awards, and awards for film stars and other celebrities. The range of recently established government and non-government awards has also opened up to a much broader section of the Australian community not only the ability to nominate but also to participate in the selection of their fellow citizens for recognition.
- 3-17 Apart from the formal recognition that comes with the awarding of medals, certain figures have been endowed with iconic status in Australian society through processes of sustained popular acclaim over the decades. In the military sphere these include Simpson and his donkey, Weary Dunlop, John Monash and Nancy Wake. In the civilian sphere they include Ned Kelly, Nellie Melba, Charles Kingsford Smith, Phar Lap and Don Bradman. As an aside, there has been no move to appoint Nellie Melba, retrospectively and posthumously, a Companion of the Order of Australia. Such a move would not change her status as an iconic Australian figure. Along with the increasing desire to award medals, there has

3 For a critical view of the government's approach, see Marilyn Lake & Henry Reynolds, with Mark McKenna & Joy Damousi, *What's wrong with Anzac?: the militarisation of Australian history*, New South, Sydney, 2010.

been an increasing desire to 'create' and recognise more iconic Australians. Halls of fame have been established not just for sportsmen but also for musicians, and stockmen and shearers. Lists of 'living treasures' have also been promulgated. There is an official 'Australian of the Year', and also a separate Australian of the year as judged by a national newspaper.

- 3-18 In short, the increasing desire for recognition goes beyond the awarding of medals, and can be achieved without awarding medals. If the community wishes to give additional recognition to iconic figures it can do so without seeking to award a Defence medal. The desire to award a Defence medal might be driven by the fact that medals are seen to be of higher value because stringent conditions must be met before they are awarded. But the awarding of an honour, even the VC, is no guarantee that an individual's exploits will remain at the forefront of Australia's consciousness generation by generation.
- 3-19 Such a desire to award a Defence honour may indicate that the public does not fully understand the purpose of Defence honours and awards. It tends to overlook the fact that gallantry medals are awarded by the Sovereign (on the advice of her ministers). In practical terms, Defence honours for gallantry are peer awards. Actions on the battlefield that, to civilians, might appear to warrant a medal for gallantry, might, to fellow soldiers, be recognised as an everyday occurrence, or one which is expected. It is the soldiers on the battlefield who can fully appreciate an action warranting a medal for gallantry, and it is these soldiers (including their commanders) who initiate and recommend gallantry awards. If the civilian community wishes to give recognition to an iconic military figure, it would be more appropriate to do so through an avenue other than by the award of a Defence honour. If that honour were to be awarded, it must meet all the stringent military conditions so as not to diminish its status or value over time.
- 3-20 The Tribunal received submissions that argued alternatively for a more radical change, if not to the Letters Patent, warrants and regulations establishing Defence honours and awards, then to the avenues for nominating or recommending them. This would place less importance on the military command structure of the day and more reliance on the historical perspective in judging individuals' valorous actions. This might pose significant difficulty in obtaining verifiable evidence so long after the event.

CHAPTER FOUR

THE IMPERIAL HONOURS SYSTEM

4-1 As noted earlier, members of the Australian armed forces received honours and awards under the Imperial system until 1992. The Imperial honours received by Australian military personnel for bravery and/or command in action between the Boer War (1899–1902) and the Vietnam War (1962–1972) remained substantially the same, with a few additional honours established during the First World War, and the introduction of specific Air Force honours after the establishment of the Royal Air Force in 1918. The highest decoration in all cases was the Victoria Cross (VC). The Imperial honours for gallantry are shown in Table 4-1.

Table 4-1 Imperial gallantry awards

Level	Recipient	Imperial awards		
		Navy	Army	Air Force
1	Officer/Warrant Officer/ other ranks	Victoria Cross	Victoria Cross	Victoria Cross
2	Officer	Distinguished Service Order	Distinguished Service Order	Distinguished Service Order
	Warrant Officer/ other ranks	Conspicuous Gallantry Medal	Distinguished Conduct Medal	Conspicuous Gallantry Medal (Flying)
3	Officer ^a /Warrant Officer	Distinguished Service Cross	Military Cross	Distinguished Flying Cross
	Warrant Officer/ other ranks	Distinguished Service Medal	Military Medal	Distinguished Flying Medal
4	Officer/Warrant Officer/ other ranks	Mention in Despatches	Mention in Despatches	Mention in Despatches

a These were the usual recipients.

Source: Defence Honours and Awards Appeals Tribunal Secretariat, from Table 5-1.

4-2 Of the honours for gallantry in the presence of the enemy or in action, only the VC and the Mention in Despatches (MID) could be awarded posthumously. The following paragraphs discuss the relevant rules and procedures for the award of the VC and the MID, as well as associated matters. In deciding what associated matters needed to be examined, the Tribunal drew on its own research, but was also guided by the issues raised in the submissions received.

Relevant rules and administrative processes for awarding the Victoria Cross

4-3 To consider whether it might be possible to award a VC retrospectively or revise upward those gallantry awards made previously, it is important to start with a clear understanding of the relevant rules and administrative processes and how those rules and processes have changed over the years. Much of the following

discussion is based on two papers prepared by Mr Anthony Staunton at the request of the Tribunal.

- 4-4 The Warrant instituting the VC was signed by Queen Victoria on 29 January 1856 and published in the *London Gazette* on 5 February 1856. The VC was instituted at the suggestion of Prince Albert during the Crimean War (1853–1854). Between 1857 and 1911 there were seven amendments, mainly dealing with extending eligibility to different groups and forces, but two dealing with the qualification for the VC. Major revisions were published in the *London Gazette* on 18 June 1920 and 20 March 1931. Four more amendments all dealt with eligibility.

Qualification for the Victoria Cross

- 4-5 The original warrant for the VC stated that it was to be awarded for ‘some signal act of valour, or devotion’ undertaken ‘in the presence of the enemy’. A subsequent amendment made it clear that an award would not be made if the serviceman was undertaking a task that it was his duty to perform, even if it required great gallantry to do so. The 1881 amendment reworded the qualification to ‘conspicuous bravery or devotion to the country in the presence of the enemy’. The 1920 amendment reworded the qualification so that the VC was only to ‘be awarded for most conspicuous bravery or some daring or pre-eminent act of valour or self-sacrifice or extreme devotion to duty in the presence of the enemy’.
- 4-6 The issue of an award for an action other than ‘in the presence of the enemy’ was clarified during the First World War. Between March 1916 and December 1917, nine VCs were awarded to British soldiers who acted to protect fellow soldiers from accidental explosions of grenades, bombs, shells and mortar rounds. Sergeant DE Coyne, 31st Australian Infantry Battalion, was testing some Mills grenades while in the front line on 15 May 1918. He threw one of them but it rebounded and, realising his men were not clear, he deliberately threw himself over the grenade, dying of his wounds. Coyne was recommended for the VC, but the policy that the VC should be awarded for acts ‘in the presence of the enemy’ had been instituted six months earlier, and instead of the VC he was posthumously awarded the prestigious Albert Medal in Gold (the first of two classes of this honour, see footnote 30). Similar actions by British soldiers in 1918 were recognised by the award of the Albert Medal and, during and after the Second World War, the George Cross.
- 4-7 For similar reasons, no person has been awarded the VC for bravery while a prisoner of war, as it was not considered to be ‘in the presence of the enemy’ in the sense of being in combat with that enemy. Since its institution in 1940, the George Cross has been the award considered appropriate to recognise the highest level of brave conduct while a prisoner of war.

Eligibility for the Victoria Cross

- 4-8 While the original VC was intended for British officers and men, by 1867 eligibility was extended to colonial troops, with the first recipient being Major Charles Heaphy, for an action in New Zealand in 1864. Heaphy was serving under British command, and the question of whether recommendations could be made

for colonial troops not serving with British troops was not asked until 1881 in South Africa. Surgeon John McCrea, an officer of the South African forces, was recommended for gallantry during hostilities that had not been approved in advance by the British Government. He was awarded the VC and the principle was established that gallant conduct could be rewarded independently of any political consideration of military operations.

- 4-9 That the VC might be awarded to members of (British) Commonwealth countries involved in conflicts in which Britain was not involved was confirmed by the 1961 revision to the warrant. The four Australian VCs awarded in Vietnam are a more recent case where Britain was not involved in the conflict.

The operational scale (quotas)

- 4-10 From the First World War until the end of the Vietnam War, to maintain standards within the Imperial system it was the practice to impose an operational scale, also known as a 'quota', which regulated how many honours could be made to each of the relevant elements of the services in a particular period. During the Vietnam War, for example, the Australian Government followed the Imperial ration or quota system, measured against the average strengths of the three Australian services in the theatre. Army honours were granted on an operational scale of one decoration per 250 personnel and one MID per 150 personnel in each six-month period.¹ The scale is illustrated in Table 4-2.

Table 4-2 Operational scale applied to service in Vietnam

Service	Awards type	Operational scale
RAN and Army ground forces, non-aircrew	Decoration	1 per 250 personnel
	Mention in Despatches	1 per 150 personnel
Aircrew (Helicopter operations)	Decoration	1 per 400 operational flying hours (calculated at 1/3 of total hours flown)
	Mention in Despatches	5 per 3 decorations
RAAF (dependent on aircraft type in squadron)	Decoration	Varies between 1 per 300 hours flown and 1 per 1000 hours flown (calculated at 1/3 of total hours flown)
	Mention in Despatches	5 per 3 decorations

Source: Department of Defence, Submission 235, Attachment 1.1, p. 11.

- 4-11 Some submissions have suggested that because of this quota system, some deserving service personnel who might have been awarded a VC could have been 'crowded out'. This was not the case. When the VC was instituted by Queen Victoria in 1856, there was no direction regarding quotas; such a policy continued with the various amendments to the VC Regulations and remains extant.

¹ Department of Defence, Submission 235, p. 11; Ashley Ekins with Ian McNeill, *Fighting to the finish*, Allen & Unwin, Sydney, 2012, p. 807.

- 4-12. With the establishment of the VC for Australia, the tradition of not specifying quotas for the award was continued. The administrative arrangements for the award of the VC for Australia are covered by Chapter 6 of the *Defence honours and awards manual*. Quotas now only apply in a limited way to the Military Division of the Order of Australia² and conspicuous service decorations.³ They do not apply to the VC (Chapter 6 of the *Defence honours and awards manual*), gallantry decorations (Chapter 7) or distinguished service decorations (Chapter 8).

Posthumous awards

- 4-13 The 1856 Warrant was silent on the question of whether the VC could be awarded posthumously. In 1907, King Edward VII approved certain posthumous awards; 194 posthumous awards, including 14 to Australian forces, were granted between 1914 and 1919. In 1920 the warrant was amended to state explicitly that the VC might be awarded posthumously, and this clause remained unchanged in subsequent revisions. Where an individual was killed in action or died subsequently from any cause before the award was formally approved, it was deemed to be posthumous. If the recipient died after an award had been approved, but before it was gazetted, the award was not posthumous. The gazette entry showed 'since deceased'.
- 4-14 Under the Imperial system only four honours could be awarded posthumously: the VC, MID, the George Cross and, after 1977, the George Medal.⁴ The latter two honours are primarily for bravery not in the presence of the enemy. These might be awarded to military personnel for actions not directly against the enemy, for which purely military honours were not normally granted. This includes defusing mines and rendering safe unexploded ordnance, rescuing trapped crew members from burning vessels or aircraft, and brave conduct while a prisoner of war. In effect, in operational circumstances where a serviceman was killed in action, recognition of gallantry was confined either to the award of the posthumous VC or a posthumous MID.

2 Paragraph 20(3) of the Constitution of the Order of Australia states that 'In any one calendar year, the number of appointments to the Military Division shall not exceed one-tenth of one per cent of the average number of persons who were members of the Defence Force on each day of the preceding year'. The Chief of the Defence Force (CDF) has further directed that the number of nominations or appointments in the Order of Australia in any one year should normally be limited to 75 per cent of the number allowed under the Constitution of the Order of Australia. This self-imposed limit may be varied, should circumstances justify, by the CDF or the Chiefs of Service Committee (COSC). The Constitution of the Order of Australia also specifies that military appointments at the Companion level shall not exceed 5 per cent of the total number of persons who are appointed each year and, at the Officer level, no more than 20 per cent. However, in order to maintain the prestigious nature of these appointments, the COSC has stipulated that appointments at the Officer level should normally not exceed 10 per cent of the total number of persons who are appointed each year.

3 Regulations governing the awarding of Conspicuous Service Decorations do not stipulate a quota on the number that may be awarded. However, a self-imposed guidance figure equivalent to 125 per cent of the annual quota for appointments allowed for within the Military Division of the Order of Australia has been established by the COSC for non-operational service. This figure may be varied at the discretion of the CDF or the COSC. There is no restriction on the number of awards that may be made for operational service — paragraph 12.12 of the *Defence honours and awards manual*.

4 Instances are recorded when this seemingly firm policy was not followed. For example, Lieutenant Commander JD Stead, RN, received a DSO; Lieutenant Commander RH Cooke, RN, a DSC; and Acting Petty Officer GL Blenkhorn a DSM posthumously for an action on 13 March 1941. For a description of the action see SWC Pack, *Night action off Cape Matapan*, Ian Alan, London, 1972, pp. 54-56. Awards were promulgated in the *Third Supplement to the London Gazette* no. 35231, 25 July 1941. Referred to in Submission 170, Mr Neil Coates.

- 4-15. This posthumous policy remained in place until 1979, when the Queen agreed that all remaining operational awards (with the exception of the Distinguished Service Order [DSO]) be amended to permit them to be awarded posthumously. Honours and awards under the Australian system have never had a posthumous restriction.

Process for recommending the Victoria Cross

- 4-16 Clause 7 of the 1856 Warrant contained the provision whereby an admiral, commodore, or general officer who witnessed an act worthy of the award could provisionally confer the award, subject to confirmation by the Queen. This provision was only used in the Indian Mutiny (1857–1859), and there were a number of administrative issues including the situation where the recipient died between the provisional conferring of the award and its confirmation. It was an unpopular provision among administrators and was not included in the 1920 or subsequent revisions.⁵
- 4-17 Clause 8 of the 1856 Warrant dealt with how awards were to be recommended, and is essentially unchanged, except that the 1961 Warrant specifically mentioned British Commonwealth governments. This process was followed by Australia during the Second World War in the South-West Pacific Area, and was followed later in Vietnam for all services. The relevant 1961 clause stated:

that every recommendation for the award of the Decoration of the Cross shall be made and reported through the usual channel to the Senior Naval, Military or Air Force Officer Commanding the Force, who shall call for such description, conclusive proof as far as the circumstances of the case will allow, and attestation of the act as he may think requisite, and if he approve he shall recommend the grant of the Decoration to Our Lords Commissioners of the Admiralty, Our Secretary of State for War or Our Secretary of State for Air as the case may be, or, in the case of any Member Country of the Commonwealth Overseas, the Government whereof shall so desire, the appropriate Minister of State for the said Member Country, who shall submit to Us the names of every one so recommended whom they shall consider worthy.⁶

That is, the recommendation was to be forwarded through the chain of command to the relevant government minister, and then to the Sovereign.

The witness requirement

- 4-18 The original Royal Warrant for the VC covers the requirement for witnesses to 'the signal act of valour'. These are mentioned in Clause 8, such that:

It is ordained, where such act shall not have been performed in sight of a commanding officer as aforesaid, then the claimant for the honour shall prove the act to the satisfaction of the captain or officer commanding his ship, or to the officer commanding the regiment to which the claimant belongs, and such captain or such commanding officer shall report the same through the usual channel to the Admiral or Commodore commanding the force employed on the service, or to the officer commanding the forces in the field,

⁵ In the First World War, commanders-in-chief had the power to grant some honours provisionally including the DSO, MC and DCM, and Corps commanders had the power to grant the MM.

⁶ MJ Crook, *The evolution of the Victoria Cross-a study in administrative history*, Midas Books, Kent, 1975, Appendix XVIII, p. 304.

who shall call for such description and attestation of the act as he may think requisite, and on approval shall recommend the grant of the Decoration.⁷

4-19 The 'aforesaid' mentioned above refers to immediate awards when witnessed by an 'Admiral or General Officer commanding', who then had the power to grant the award as previously mentioned (paragraph 4-16). This provision was unpopular and was revoked in 1920. It should be noted that the warrant does not specify the number of witnesses required. The *Instructions regarding recommendations for honours and awards* published by the British Military Secretary's Branch in 1918 cover further requirements for witness statements, such that:

Statements are not to be written out by one person and signed by all witnesses, neither is the statement of a witness to be copied by another witness and forwarded as his own. Such statement does not help the case in any way, but, as a matter of fact, rather detracts from its merit.⁸

Again, the requirement for three witnesses is not specified. However, the Army administrative processes during both world wars stipulated three witnesses, and the *Pamphlet on military honours and awards* (1953) also stipulated three witnesses.⁹ This was not the case for the RN and RAN, which did not have similar instructions, and the Royal Australian Air Force (RAAF), which sought witness statements 'whenever practicable'.¹⁰

4-20 When the VC for Australia was established (see paragraph 5-4), its Letters Patent were very similar to the Royal Warrant for the VC. There is no mention of a requirement for witnesses in the Letters Patent or the Regulations for the VC for Australia. The *Defence honours and awards manual*, released by the Secretary of the Department and Chief of the Defence Force (CDF) on 3 September 2012, specifically requires statements by at least three eyewitnesses.¹¹ The Tribunal has been unable to find any decision by the government to impose this additional requirement of eligibility for the VC for Australia. Therefore, it is open to the minister making a recommendation to be satisfied that, although he has not received any witness statements, the act of valour by an individual should be recognised by the award of the VC for Australia. In practical terms, the minister is unlikely to receive a VC recommendation unless three witness statements were attached because Defence would apply the requirements of the *Defence honours and awards manual*. This means that in carrying out an inquiry such as the present one, or in the exercise of its reviewable decision jurisdiction, the Tribunal may be guided by what the manual provides, but is also not bound by any so-called 'three witness rule' or by any other Defence subordinate rule or policy.¹²

7 *London Gazette*, no. 21846 5 February 1856, p. 410.

8 Military Secretary's Branch. *Instructions regarding recommendations for honours and awards*, Military Secretary's Branch, London, 1918.

9 War Office, *Pamphlet on military honours and awards 1953* (reprinted and modified for Australia, 1958) Her Majesty's Stationery Office, London, 1958; and War Office, *Pamphlet on military honours and awards 1960*, Her Majesty's Stationery Office, London, 1953.

10 In the Second World War, the RAAF stated that three witnesses were required 'whenever practicable'. 'RAAF Air Member for Personnel Minute — Honours and Awards', 1 November 1942. NAA: A703/138, 642/1/12 Part 2.

11 *Defence honours and awards manual*, Chapter 6, Annex A, paragraph 10. This witness requirement was also included in the (now) superseded Defence Instructions (General) Personnel 31-3 — *Australian Gallantry and Distinguished Service Decorations*, dated 30 November 1992.

12 The *Defence Act 1903* (Cwlth), s. 110VB (6).

4-21 There are several cases (as well as the US Unknown Soldier) where the three-witness requirement was not applied in the granting of a VC. An example is that of Canadian First World War air ace William Avery Bishop, who was awarded the VC in August 1917 after he conducted a daring solo air raid on a German aerodrome where he allegedly shot down three of the enemy and destroyed several more on the ground.¹³ There were no witnesses to the action and, according to respected Canadian historian Hugh Halliday, Bishop was 'the only man ever to be awarded the Victoria Cross solely on the basis of his own word. Collaborative evidence has disappeared — if it ever existed'.¹⁴ Searches of German records fail to mention the raid and the whereabouts of this airfield remains a mystery. As can be imagined, this created a great deal of controversy, both at the time and later. After a number of more recent books and TV documentaries raised doubts about Bishop's claims over 80 years after the event, a Canadian Senate inquiry was held, but was inconclusive. It appears that Bishop's original nomination was for a bar to his DSO, but the recommendation was leaked to the press as that of a VC. To save embarrassment at a time when the air war over the Western Front was not going well, a VC was subsequently awarded.¹⁵ Bishop died in 1956, so the facts have never been fully established. As noted earlier, since the First World War, the three-witness requirement has generally been applied in the Australian Army, but not the other services.

The Victoria Cross ballot

4-22 In circumstances where a large group or ship's company was involved in an action where great valour was displayed, but where it was difficult to isolate any particular individual, Clause 13 of the 1856 Warrant allowed for a ballot to decide who should be awarded the VC. That is, nomination of the recipient was left to a 'jury' of the same rank as the person to be rewarded. Officers and non-commissioned officers could each select one recipient and other ranks could select two recipients individually to receive the VC. Those chosen to cast a ballot were given a blank sheet of paper and were able to write down their preferred candidate after a few minutes of consultation with each other.¹⁶ There were 46 ballots between 1857 and 1918, including two for the RN's raid on Zeebrugge in 1918. Leading Seaman Dalmorton Rudd of the RAN participated in one of the ballots and his service record was annotated accordingly.¹⁷ Rudd and his peers elected Able Seaman Albert McKenzie, RN, to receive the VC, and Captain Alfred Carpenter, RN, CO, of HMS *Vindictive* was elected by the officers to receive the VC as well. Rudd received the Distinguished Service Medal (DSM) for this action. Participation in the Royal Marines ballot was also noted on the service records of

13 *London Gazette* no. 30228, 10 August 1917, p. 8211.

14 Hugh A Halliday, *Valour reconsidered: inquiries into the Victoria Cross and other awards for extreme bravery*, Robin Brass Studio, Toronto, 2006, p. 144.

15 Halliday, *Valour reconsidered.*, pp. 148–150.

16 This was noted by Captain Arthur Chater in his diary as occurring during the ballot for the Royal Marines, Imperial War Museum Department of Documents, Captain AR Chater RMLI 74/1101/1; details are also provided in Chapter 16, Able Seaman Dalmorton Joseph Owendale Rudd.

17 Service Record Dalmorton Joseph Owendale Rudd #3389, NAA: A6670, RUDD D J O.

Royal Marines. One such illustration is the service record for Lieutenant Charles Lamplough, Royal Marines Light Infantry.¹⁸

- 4-23 Although there have been no ballots since 1918, the provision for ballot awards remains in the VC Warrant (Clause 9). The Letters Patent for the VC for Australia and the *Defence honours and awards manual* make no mention of a ballot.

The rarity of the Victoria Cross

- 4-24 Since its inception in 1856, 1356 Imperial VCs have been awarded, of which 91 have gone to Australians serving with the Australian forces (see Appendix 9). This is just 6.7 per cent of the total. A further five Imperial VCs have been awarded to Australians serving in British units. Of the 91 awards, the Army has received 89, the RAAF has received 2 and the RAN nil. At the time of writing, three VCs for Australia have also been awarded. If the Tribunal were to recommend VCs for Australia to the 13 persons under consideration, this would increase the number of Australians awarded VCs by 13.1 per cent — a considerable increase on an historical basis — and also risks affecting the standard of the award detrimentally.¹⁹

Immediate and periodic awards

- 4-25 In general, recommendations for honours could be made for immediate or periodic awards. A recommendation of an immediate award was made straight after the action warranting the award. Recommendations for periodic awards were submitted at the end of a set period of time, usually six months. Army commanders-in-chief had considerable discretion in making immediate awards in the field. The British Admiralty, War Office and Air Ministry in wartime also had wide discretion for both immediate and periodic awards.

Mention in Despatches

- 4-26 It is a longstanding practice of land and sea commanders to mention subordinates in despatches. The MID is the oldest form of recognition for bravery or distinguished service. Originally confined to senior officers, by the latter half of the 19th century junior officers and other ranks (including native soldiers) were mentioned. The form could be a description of the individual's service but, particularly since the Boer War, it has been a list of names appended to the despatch. In 1902 the Interdepartmental Rewards Committee recommended that publication in the *London Gazette* was essential to constitute a mention, and this practice has been followed since. In 1919 King George V approved a special certificate to be given to all persons mentioned in First World War despatches, and in 1920 it was decided that a multiple-leaved bronze oak leaf should be worn on the ribbon of the Victory Medal. Between 1920 and 1993, a single bronze oak leaf was worn on the appropriate war medal and, since 1993, a silver oak leaf is worn. As such, the MID has never been included in the order of wear or precedence. Only

¹⁸ Charles Robert Wharram Lamplough, 10 June 1896, Major General — Admiralty Officer's Service Record (Series III) TNA: ADM 196/64/117.

¹⁹ Twelve of the 13 individuals under consideration are Australian.

one emblem is worn irrespective of the number of times an individual had been mentioned. Contrary to a widespread belief, MIDs have not been awarded to large numbers of military personnel; in the 2nd Australian Imperial Force, for example, less than 1 per cent of members received an MID.²⁰

- 4-27 Under the Imperial system, an MID could be awarded for either an act of bravery or for continuous good work over a period. There was no visible difference in the oak leaf awarded. This led to an unfortunate assumption that an MID for an operational action was not highly regarded. That was definitely not the case; the MID was a highly regarded decoration. In the Australian honours system, which does not have an MID, there are separate equivalent Commendations for Gallantry and for Distinguished Service.

Posthumous Mention in Despatches

- 4-28 As noted earlier (paragraph 4-14), in the Imperial system only the VC, MID, George Cross and, after 1977, the George Medal could be awarded posthumously. During the Second World War it was recognised that because only the VC or the MID could be awarded posthumously for action in the presence of the enemy, a situation might occur where a serviceman had been killed while undertaking an action that might be worthy of a higher award than an MID, but might not be considered worthy of a VC. For example, in January 1942, Admiral Sir Andrew Cunningham, RN, Commander-in-Chief Mediterranean Station, submitted that the regulations should be amended to allow the award of other honours posthumously. The Lords of the Admiralty replied that the question had been considered by both the Admiralty and the United Kingdom Chiefs of Staff Committee, which had decided not to change the regulations. As the Admiralty explained:

There are and must be certain hard cases. It is considered however that in the nature of the case, the rules being what they are, a greater value must attach to a Posthumous Mention than to a Mention for the living, since it obviously must represent anything up to but not including the VC.²¹

- 4-29 The question of awarding posthumous honours other than VCs and MIDs was raised in the House of Commons on 20 May 1942, and the British Prime Minister agreed to have the matter examined by the United Kingdom's Committee on the Grant of Honours, Decorations and Medals in Time of War.²² In requesting this advice, the British Prime Minister's office noted that if posthumous awards were to be broadened, the system would become unmanageable, especially since some awards were made for both gallantry and good service. In response, the Committee concluded that if a scheme to broaden posthumous awards was introduced it would be unfair to 'those who have already given their lives', and this would cause dissatisfaction to the next of kin and bring the system into

20 This case is argued by Mr Graham Wilson in Appendix N to Submission 99.

21 Minute, Naval Secretary, Lords of the Admiralty, to Admiral Sir Andrew Cunningham, 4 March 1942, TNA: ADM 1/12370.

22 The Committee was chaired by the Secretary of the Treasury and comprised 14 other members from a total of 10 government departments. Minute, 'Committee on the Grant of Honours, Decorations and Medals in Time of War, 1939-1942', 9 December 1942 TNA: CAB 66/32/7.

disrepute. The Committee recommended no change to the system. The British Cabinet agreed.²³

Australian Army and the Royal Australian Air Force — procedure for recommending Victoria Crosses and other gallantry awards

Boer War and the First World War

4-30 All recommendations relating to Australian service personnel in the Boer War and the First World War were processed through the commanders-in-chief of the various theatres of operations. However, in the Boer War, few records were kept of recommendations for honours. Author Max Chamberlain points out that 'because the Australian units were mostly comparatively small, attached to British formations and under British command, their deeds were often subsumed in the whole.'²⁴ This appears to be the case for Lieutenant Neville Howse, who was awarded Australia's first VC for an action in July 1900.

4-31 Letters to and from Colonel William DC Williams, Howse's commanding officer and the Principal Medical Officer for the New South Wales (later Australian) Army Medical Corps indicate that Williams was known as a fine administrator. Some of his letters are quoted in *Anzac doctor* by Stuart Braga, and one in particular states:

Lieutenant N.R. Howse, NSW Medical Corps, seeing a trumpeter fall in the firing line, and though the bullets were flying as thick as hail in a summer thunderstorm, rushed out to his assistance. His [Howse's] horse was shot dead, but the gallant surgeon reached his patient, dressed his wounds, he having been shot through the bladder, and carried him into shelter and safety.²⁵

4-32 Braga goes on to say that:

by this time numerous Victoria Crosses had been recommended for members of various British units, and Williams knew the system. He drew the attention of Ridley [Lieutenant Colonel Charles P Ridley, a British Army officer] and Broadwood [Brigadier-General Robert G Broadwood, a British Army officer] to what Howse had done, and the recommendation was endorsed by both officers²⁶

The award appeared in the *London Gazette* on 4 June 1901.²⁷

4-33 In the First World War, the great majority of recommendations went initially through headquarters staffed by Australians (or British officers holding 'Australian' appointments), and, in the latter part of the war, commanded by Australians at all levels — from corps downwards. The case of the seven VCs

23 Report, 'Committee on the Grant of Honours, Decorations and Medals in Time of War', 9 December 1942, TNA: AIR 2/9198.

24 Stuart Braga, *Anzac doctor*, Hale & Iremonger, Alexandria, NSW, 2000, pp. 67–68, quoting Max Chamberlain in *To shoot and ride: the Australians in the South African War 1899–1902*, Military Historical Society of Australia, Ormond East, Victoria, 1967.

25 Braga, *Anzac doctor*, p. 67, quoting WDC Williams 'The New South Wales Army Medical Corps at the front' in GB Barton, *The story of South Africa*, Sydney, n.d. [1901], vol. 2, p. 398.

26 Braga, *Anzac doctor*, p. 67.

27 *London Gazette* no. 27320, 4 June 1901, p. 3769 and correction *London Gazette* no. 27325, 21 June 1901, p. 4187.

awarded to Australian officers and men for actions at Lone Pine between 6 and 10 August 1915 demonstrates the procedure while Australians were at Gallipoli.

- 4-34 Between 20 and 29 August 1915, Major General Harold Walker, Commander 1st Australian Division (a British officer), submitted recommendations for the VC for seven named officers and men from his Division. On 1 September 1915 Lieutenant General William Birdwood, Commander Australian and New Zealand Army Corps (a British officer) submitted Walker's recommendations plus a further three recommendations (Corporal Cyril Bassett from the New Zealand and Australian Division under Major General Alexander Godley [a New Zealand officer], and two officers from the 29th Indian Brigade), for a total of 10 recommendations for the VC. These recommendations were submitted to the Assistant Military Secretary General Headquarters for the endorsement of General Sir Ian Hamilton, Commander-in-Chief Mediterranean Expeditionary Forces (a British officer), before being submitted to the War Office in London. The award of the VC to the seven Australians and Corporal Bassett was approved by His Majesty the King and gazetted on 15 October 1915.²⁸
- 4-35 In all cases, the recommendations from corps level upwards were processed by British commanders and no Australian minister or service authorities were involved.

Between the wars

- 4-36 Between the wars, honours to Australian military personnel, including New Year, King's Birthday and other honours were processed by the Department of Defence, and were submitted by the Minister for Defence through the Prime Minister to the Governor-General, who transmitted them in secret to the Secretary of State for Dominion Affairs in London. The Dominions Office then did all the necessary processing so that nominations could be put formally to the King. An example is contained in the personal file of Aircraftsman William McAloney, who was awarded the Albert Medal for rescuing an airman from a burning aircraft in December 1937.²⁹ A reply was received in February 1938 stating His Majesty had approved it, and announcing the award.

The Second World War — Europe and the Middle East

- 4-37 In the Second World War, recommendations for Australian Army personnel serving in the Middle East in 1940–1942 were processed through the commanders-in-chief of the various theatres of operations, with no reference being made to Australian ministers or service authorities before awards were made. This applied to both immediate and periodic awards.³⁰ The case of Corporal John Hurst Edmondson,

28 *London Gazette*, no. 29328, 15 October 1915, pp. 10153–10154. The seven Australian officers and men were: Captain Alfred Shout, MC (died shortly thereafter), Private John Hamilton, and Private Leonard Keyser (all 1st Battalion); and Captain Frederick Tubbs; Lieutenant Williams Symons, Corporal Alexander Burton (killed); and Corporal William Dunstan (all 7th Battalion).

29 The Albert Medal was awarded to recognise the saving of a life. There were two classes: gold and bronze. The Albert Medal in gold was replaced by the George Cross, instituted in 1940. See documents in NAA: A2926, A18, Aircraftsman William Simpson McAloney.

30 The exception was knighthoods. 'Procedure for honours and awards in time of war' (Awards to Australian personnel recommended by UK Government), NAA: A816, 66/301/5.

who was awarded the VC for an action at Tobruk in April 1941, demonstrates the procedure in this theatre.

- 4-38 The award was made following the recommendations of the Commanding Officer 2/17 Battalion, Lieutenant Colonel John Crawford (an Australian Army officer); Commander 20th Brigade, Brigadier John Murray (an Australian Army officer); Commander 9th Division, Major General Leslie Morshead (an Australian Army officer); Commander 2nd Australian Imperial Force, Lieutenant General Thomas Blamey (an Australian Army officer); and Lieutenant General Noel Beresford-Peirse, Commander Western Desert Force (a British Army officer).³¹ The recommendation was then forwarded to General Archibald Wavell (a British Army officer), Commander-in-Chief, Middle Eastern Command, who passed the recommendation to London for necessary action and approval.
- 4-39 The (Australian) Prime Minister's Department received advice on 2 July 1941 from the High Commissioner's office in London that the King had approved a posthumous award for Corporal Edmondson. On 3 July it was confirmed that the posthumous award to Edmondson was the VC.³² The award appeared in the *London Gazette* on 4 July 1941.³³

The Royal Australian Air Force in Europe and the Middle East

- 4-40 Members of the RAAF serving under Royal Air Force command were treated in the same manner as Royal Air Force members. For the award of the VC for Pilot Officer Rawdon Hume Middleton (the only RAAF member to be awarded the VC in the European theatre), the process began with a recommendation by Middleton's commanding officer after the facts had been established and witness statements taken. The nomination was then forwarded to the station commander, then the group commander, and after receiving support it was passed to the Air Officer Commanding-in-Chief (AOC-in-C) of Bomber Command, Air Marshal Arthur Harris. Following the AOC-in-C's endorsement, the recommendation was then forwarded to the Undersecretary of State Air Ministry for consideration by the Air Ministry Honours and Awards Committee.³⁴ Finally, it was submitted to the Sovereign for approval. Once the King had approved the award it was promulgated in the *London Gazette*.³⁵ At no stage was there any reference to Australian ministers or service authorities. As with the Australian Army and the RAAF in the South-West Pacific Area, at any stage in the process, the recommendation could be halted (denied), downgraded or upgraded after due consideration of the case and strict application of the award criteria.

The Pacific theatre

- 4-41 With the exception of prisoners of war (see paragraphs 4-66 to 4-77), of over 16,000 orders, decorations and medals, MIDs and foreign awards to Australian

31 Army Form W.3121, May 1941, TNA: WO 373/17.

32 Cablegram I.11349 received 2 July 1941; and teleprinter message no. 2012/I.11498 received 3 July 1941, AWM119 A11.

33 *Supplement to the London Gazette* no. 35207, 4 July 1941, p. 3807.

34 Decorations Medals Honours and Awards, VC Recommendation Rawdon Middleton, TNA: Air 2/4890; and Middleton Rawdon Hume, Service no. 402745, NAA: A9300.

35 *Third Supplement to the London Gazette* no. 35864, dated 12 January 1943, p. 329.

forces in the Second World War, more than half were recommended by units serving in the South-West Pacific Area. The awards of the VC to Private Leslie Thomas Starceвич and Flight Lieutenant William Ellis Newton illustrate the procedure in the South-West Pacific Area. In each case there were three signed witness statements. The recommendation from Starceвич's commanding officer was forwarded through brigade, division and corps commanders to the commander-in-chief, General Blamey, who agreed. He sent it to the Minister for the Army, who sent it to the Prime Minister. The Prime Minister endorsed it and sent it to the Governor-General, who passed it to the Secretary of State for Dominion Affairs in London. The Dominions Office sent the recommendation to the War Office for vetting and formal approval by the relevant British officials, who then sent it to the King.³⁶ The recommendation from Newton's commanding officer was forwarded to the Air Board, which agreed and sent it to the Minister for Air. The process was then the same as for Starceвич except that it was handled by the British Air Ministry in London.³⁷ In each case the Governor-General received advice from London that the King had approved the honour shortly before it appeared in the *London Gazette*.

- 4-42 Under a delegation from the King, the Governor-General could approve immediate awards for gallantry (except the VC), including MIDs and commendations for gallantry and good service.³⁸ The awards were published in the *London Gazette*. A small number of the Second World War MIDs, and over 30 Vietnam MIDs, seem only to have been published in the *Commonwealth of Australia Gazette*. Under a further delegation, the Governor-General approved 400 foreign (non-imperial) awards for the Second World War and these were only published in the *Commonwealth of Australia Gazette*.

The Korean War, the Malayan Emergency and Confrontation

- 4-43 In Korea (1950–1953), Malaya (1948–1960) and during Confrontation (1964–1966), Australian recommendations were processed through the theatre commanders, who were either Australian or British officers. In Korea, the theatre commander (the Commander-in-Chief British Commonwealth Forces Korea) was an Australian officer, so recommendations for Australian honours were forwarded to Australia. The case of Lieutenant Colonel Ronald Hughes, who was awarded a DSO for skilful and determined leadership as Commanding Officer of 3rd Battalion the Royal Australian Regiment (3RAR) in the periodical awards for the second half of 1952, demonstrates the procedure in Korea.
- 4-44 The award was made following the recommendation of the Commander 28th British Commonwealth Brigade, Brigadier Thomas Daly (an Australian Army officer); General Officer Commanding 1st Commonwealth Division, Major General Michael West (a British Army officer); Commander-in-Chief British

36 AMF [Governor-General's Office, honours and awards file]. Victoria Cross [Cpl JB MacKay - Posthumous, Private LJ Starceвич]; AWM 119, 8/7/1862. VC to Pte L Starceвич 2/43 Aust Inf Bn. AWM 88, O/A 30. *Supplement to the London Gazette*, no. 37340, 6 November 1945, p. 5431.

37 RAAF, [Governor-General's Office, honours and awards file] Victoria Cross: Flying Officer (Temporary Flight Lieutenant) William Ellis Newton: AWM 88, O/A 20A. *Third Supplement to the London Gazette*, no. 36215, 15 October 1943, p. 4617.

38 Periodic operational awards were forwarded via the Governor-General to the Sovereign. Cable, Secretary of State for Dominion Affairs to Canberra, 25 April 1942, NAA: A2031, 111/1939.

Commonwealth Forces Korea, Lieutenant General William Bridgeford (an Australian Army officer); and Chief of the General Staff, Lieutenant General Sydney Rowell (an Australian Army officer). The recommendation for the DSO was one of 42 awards submitted for consideration within the quota of awards for the Korean War for the period 9 July 1952 to 9 January 1953.³⁹

4-45 On 20 March 1953 the Governor-General forwarded Despatch no. 50 to the Secretary of State for Commonwealth Relations, in which he supported the recommendations of the Prime Minister 'for periodical awards to forty-two members of the Australian Military Forces for operational services in Korea during the period 9 July 1952 to 9 January 1953'.⁴⁰ On 16 May 1953 Government House received a cable from the Dominions Office stating that 'Her Majesty The Queen has been pleased to approve the forty-two recommendations in your Despatch No 50 ...'.⁴¹ The award appeared in the *London Gazette* on 26 May 1953.⁴²

4-46 During the Malayan Emergency and Confrontation, the system for recommending honours to Australians reverted to one that was very similar to when the Australians served in the Middle East in the Second World War. In these cases, there was a British commander-in-chief who forwarded recommendations to London without consulting the Australian Government. The case of Lieutenant Pat Beale, who was awarded a Military Cross for an action in Borneo in 1965, demonstrates the procedure during Confrontation. The recommendation for the award of an MC to Lieutenant Beale was initiated by Lieutenant Colonel Bruce McDonald, Commanding Officer 3RAR. The form (Army Form W. 3121) was then forwarded for endorsement to Brigadier Bill Cheyne, Commander 99th Gurkha Infantry Brigade, before being forwarded to Major General Peter Hunt, General Officer Commanding 17th Gurkha Division and Land Forces Borneo, and then to Lieutenant General Alan Jolly, General Officer Commanding Far East Land Forces. The final approval was given by Air Chief Marshal John Grandy RAF, Commander-in-Chief Far East.⁴³ Cheyne, Hunt, Jolly and Grandy were all British officers. On 4 August 1965 Jolly sent the Sixth Operational List for honours and awards in Borneo for the period 24 December 1964 to 23 June 1965 to the Ministry of Defence (Army Office) United Kingdom. In the letter, reference was made to the authorised scale during that period, and nominations of the appropriate number of awards for gallantry and distinguished service and MIDs were forwarded accordingly. Four Australians were included in this list. Lieutenant Beale's MC was the 25th in the order of merit of 32 gallantry and distinguished service awards.⁴⁴ On the same day, Jolly also sent a copy of the Operational List with the four Australian names to Army Headquarters Australia.⁴⁵ On 20 November 1965, Government House received a telegram from the Secretary of State for Commonwealth Relations (UK), advising of the Queen's approval of

39 'Certificate showing the quota of awards for the Korean Area', 2 March 1953, AWM88 AMFK/132.

40 Despatch no. 50, Government House to the Secretary of State for Commonwealth Relations, 20 March 1953, AWM88 AMFK/132.

41 Decode of a cable from London received by the Governor-General, 16 May 1953, no. 20, AWM88 AMFK/132.

42 *London Gazette* no. 39862, 26 May 1953, p. 2909.

43 Recommendation for Honours or Awards, Army Form W.3121, NAA: A2880 5/5/4.

44 Honours and Awards — Borneo — Sixth Operational List, 4 August 1965, FE 39801/1 MS, NAA: A2880, 5/5/4.

45 *ibid.*

the four Australian awards (including Beale's), and also advising the date of the announcement in the *London Gazette* (14 December 1965).

The Vietnam War

- 4-47 In Vietnam, and since 1975, all awards have been processed through Australian channels. One example, the award of the VC to Warrant Officer Class 2 Keith Payne, illustrates the process. The recommendation for an immediate award of the VC to Warrant Officer Payne was initiated by Lieutenant Colonel Russell DF Lloyd, Commanding Officer Australian Army Training Team Vietnam. The form was then forwarded for endorsement to Major General Robert Hay, Commander Australian Force Vietnam, before being forwarded to Major General Arthur MacDonald, Adjutant General, for approval. Having received the recommendation, the Minister for Defence wrote to the Prime Minister. On 5 August 1969, the Prime Minister, John Gorton, endorsed the recommendation and asked the Governor-General to seek the Queen's approval. On 8 August the Governor-General, Sir Paul Hasluck, wrote to the Secretary of State for Foreign and Commonwealth Affairs (UK) supporting the submission and recommending that Her Majesty be pleased to approve the award.⁴⁶ On 3 September 1969 Australia received confirmation that the Queen had formally approved the award of the VC to Warrant Officer Payne. The award was promulgated in the *London Gazette* on 19 September 1969⁴⁷ and the *Commonwealth of Australia Gazette* on 18 December 1969.⁴⁸
- 4-48 Since the end of the Vietnam commitment in 1972, there has been strong criticism of the way the Imperial honours and awards system was managed by Australian naval, military and Air Force authorities during that conflict. Dealing with that criticism and attempting to correct errors has occupied the attention of a number of review committees, some of which are described in later paragraphs.

The documentary process

- 4-49 The documentary process for all gallantry awards from the First World War to Vietnam was essentially the same for the Army and for the RAAF (except for the special circumstances mentioned earlier). In the Army, recommendations were submitted on Army Form W. 3121 after initiation by the unit commanding officer, and forwarded up to higher headquarters.⁴⁹ Among other things, the form required the recommending officer to specify the level of the award proposed. At each more

46 Award of the Victoria Cross to Warrant Officer Class 2 Keith Payne, NAA: A3211, 1969/3659.

47 *Supplement to the London Gazette*, no. 44938, 19 September 1969, p. 9703.

48 *Commonwealth of Australia Gazette*, 18 December 1969, no. 5447 position 1.

49 See Military Secretary's Branch, instructions regarding recommendations for honours and rewards, September 1918; War Office, *Pamphlet on military honours and awards 1953* (reprinted and modified for Australia, 1958) Her Majesty's Stationery Office, London, 1958; and War Office, *Pamphlet on military honours and awards 1960*, Her Majesty's Stationery Office, London, 1953.

senior headquarters the recommendation could be upgraded, downgraded or halted. If supported, it was then forwarded to the minister.⁵⁰

4-50 In practice, the procedure was as follows. In the case of the Australian Army in the Second World War, military instructions specifically stated that, for the VC, the soldier's action needed to be witnessed by three other soldiers. A joint signed statement was not permitted.⁵¹ Statements were taken on oath from the three witnesses, and these were sent through the chain of command to the unit commanding officer who, if he agreed, prepared a recommendation and citation on Army Form W.3121. This was then passed upwards through the chain of command — that is, brigade commander, divisional commander, corps commander, to the Commander-in-Chief of the Army. The latter submitted the recommendation to the Minister for the Army, who sent it to the Prime Minister, who in turn sent it to the Governor-General, who sought the King's approval.⁵²

4-51 The discretionary nature of gallantry awards means that at any stage in the process, the nomination could be halted (denied), downgraded or upgraded after due consideration of the case and strict application of the award criteria. Indeed, in both world wars, many recommendations for VCs were downgraded to lower awards during the consideration process. In the First World War, for example, at least 70 members of the Australian Imperial Force were recommended for the VC but were downgraded at brigade, division or corps level. Subsequent awards were the Albert Medal (Gold), DSO, Distinguished Conduct Medal (DCM), MC, Military Medal (MM), MID and, in at least three cases, no award at all.⁵³ The supporting citations were in most cases comprehensive, extremely strong, and described the action in detail. An example is the citation for Private Gilbert Robertson of the 7th Battalion who was recommended for the VC in August 1918:

On 9/8/18 during an attack on enemy positions between VAUVILLERS and LIHONS, Pte ROBERTSON volunteered and went out in the open under heavy enemy fire from close range to rescue L/Cpl. SCHUMAN, who had gone out collecting ammunition from casualties and had been wounded when returning. This ammunition was much needed by Lewis Gunners to beat down enemy attacks and the Lewis Gunners had run short owing to heavy casualties among the carriers. ROBERTSON at great personal risk first brought in the much needed magazines, and then returned to L/Cpl. SCHUMAN and carried him on his back to shelter. This latter action on the part of ROBERTSON undoubtedly saved the life of L/Cpl. SCHUMAN and was carried out by ROBERTSON with a total disregard of the great

50 In an answer to a question on notice by Gough Whitlam, Sir Robert Menzies on 10 December 1965 stated, 'The normal procedure followed when recommendations are made for the award of decorations to members of the Australian forces, wherever they are serving, is for the recommendation of the Commanding Officer to be referred to the appropriate Service department and, if supported, to the Department of Defence. If the Minister for Defence and the Prime Minister concur in the recommendation, it is submitted to the Governor-General, who seeks Her Majesty's approval.' *CPD*, H of R, 10 December 1965 (Sir Robert Menzies).

51 In the case of the RAAF, three witnesses were required 'whenever practicable'. Military Secretary's Branch, Instructions regarding recommendations for honours and rewards, September 1918, War Office, *Pamphlet on military honours and awards 1953* (reprinted and modified for Australia, 1958) Her Majesty's Stationery Office, London, 1958; and War Office, *Pamphlet on military honours and awards 1960*, Her Majesty's Stationery Office, London, 1953.

52 A good example is the case of Private LT Starceвич VC; see his records in AWM 119, item 128. The procedure is also set out in Defence Committee Minute, 14 September 1942, NAA: A703, 138.

53 Submission 110: Mr DJ Kelly.

danger he himself was incurring. The devotion of Pte.ROBERTSON to duty and to his comrade is worthy of the highest commendation.⁵⁴

Robertson's file has VC (a first level award) struck out and DCM (a second level award) written in its place. Robertson was eventually awarded the MM (a third level award) in 1919.⁵⁵

- 4-52 The procedure for Australian Army personnel serving in the Vietnam War was largely the same, with the recommendation going from Headquarters Australian Force Vietnam to Army Headquarters in Canberra.

Royal Australian Navy — procedure for recommending Victoria Crosses and other gallantry awards

- 4-53 The Admiralty procedure and that adopted by the RAN in both world wars was different from that applying in the Army and the RAAF.

The First World War

- 4-54 In the First World War ships of the RAN generally served beyond the Australia Station (a defined area around Australia) under RN command. Recommendations for an honour for a member of a ship's company went from the commanding officer of the ship to the commander-in-chief of the RN command in which the ship was serving. That is, Australian naval personnel were awarded honours as though they were British naval personnel. Recommendations for honours for Australian personnel serving on the Australia Station went to the Australian Commonwealth Naval Board (ACNB), and then to the Admiralty.

The European and Mediterranean Theatre in the Second World War

- 4-55 In the Second World War, until the outbreak of war with Japan, Australian ships operating beyond the Australia Station served under British naval commanders-in-chief. Therefore, recommendations for decorations (but without specification of level) for RN and RAN personnel serving in the Mediterranean Theatre in 1941, for example, were passed through the chain of command to the Commander-in-Chief Mediterranean, Admiral Sir Andrew Cunningham, RN, and thence onwards to the Admiralty. At the Admiralty, the recommendation (with nature of award not specified) was considered by the Admiralty's Honours and Awards Committee (re-established on the outbreak of the Second World War), before it was approved by the First Sea Lord.⁵⁶ This was a more centralised approach than that which applied to the British Army, where the power to give immediate awards was delegated to Commanders-in-Chief, except in the case of VCs, which were considered by the War Office. There was no reference to an Australian minister or service authority.⁵⁷ In some cases, operational awards could be processed very quickly. For example, Captain John Collins, the Commanding

54 Army Form W.3121 Recommendation for Award for Gilbert Garvan Robertson, 7th Australian Battalion, 17 August 1918, AWM28, 1/44, Part 1.

55 *London Gazette* no. 31338, 13 May 1919, p. 6060.

56 The procedure is described in correspondence in TNA: ADM 1/11252, and ADM 1/11239.

57 Memo, Naval Secretary to First Sea Lord, 18 November 1941, TNA: ADM 1/11239.

Officer of HMAS *Sydney*, was made a Companion of the Order of the Bath (CB) for action against two Italian cruisers in which the *Bartolomeo Colleoni* was sunk. This action took place off Cape Spada on 19 July 1940, and the honour was gazetted on 26 July 1940, just seven days after the action.⁵⁸

- 4-56 Recommendations for honours were made on Royal Navy Form 57, (later Form 58) entitled 'Recommendation for Decoration or Mention in Despatches', which allowed for two categories, namely 'decoration' (nature of award not specified) and MID. It was normal practice for all British award recommendations not to recommend the level of award. This was demonstrated in the recommendations made after the sinking of HM Ships *Repulse* and *Prince of Wales*, where Captain Tennant of HMS *Repulse* did not recommend the level of award, but suggested an order of merit.⁵⁹ The Admiralty system continued to apply throughout the war for Australian ships serving directly under British command. There was no reference in such cases to Australian ministers or service authorities.
- 4-57 In some exceptional cases, British commanders-in-chief sought to influence the nature of the final award — for example, in the case of Leading Seaman Jack Mantle, a pom-pom gunner in HMS *Foylebank*, which was sunk by German aircraft on 4 July 1940. Mantle's Commanding Officer, Captain Henry Percival Wilson, RN, made a strong recommendation to the Commander-in-Chief Portsmouth, Admiral Sir William James, for Mantle to be posthumously awarded the Conspicuous Gallantry Medal (presumably Wilson was unaware that this honour was not available posthumously). Admiral James then forwarded the recommendation to the Admiralty, recommending Mantle for a VC, because, in his words, 'It was a most outstanding story of courage and example in the face of the enemy'. Mantle was later awarded the VC.⁶⁰
- 4-58 An even more striking example is the process of the recommendation for Petty Officer Alfred Sephton, a gun layer in HMS *Coventry*, who was killed in action in the Mediterranean on 18 May 1941. In this case, the Commanding Officer of *Coventry* submitted a Form 58 recommendation to the Commander-in-Chief Mediterranean, Admiral Cunningham, who sought further information, and then forwarded the recommendation to the Admiralty. In addition, Cunningham lobbied both the First and Second Sea Lords for the award of a VC to Sephton, and in doing so indicated that such an award 'would have a wonderful effect on the troops out here'.⁶¹
- 4-59 Another example might be found in the case of a Canadian naval officer, Lieutenant RH Gray, who served as a pilot with the British Pacific Fleet in 1945. The captain of his ship, HMS *Formidable*, submitted a recommendation for a posthumous 'decoration'. Since he had two options — recommending a posthumous 'decoration' or a posthumous MID — the effect of recommending a posthumous 'decoration' was to indicate that he considered a posthumous VC should have been awarded (because no other honours could be awarded posthumously). The Flag Officer Commanding the First Aircraft Carrier Squadron, Vice Admiral Sir Philip Vian, RN, realised this, and explicitly recommended an

58 *Supplement to the London Gazette*, no. 34907, 26 July 1940, p. 4653.

59 See recommendations in the Admiralty file on the loss of *Prince of Wales* and *Repulse*, TNA: ADM 1/12315.

60 The chain of correspondence is retained in TNA: ADM1/10492.

61 The chain of correspondence is retained in TNA: ADM1/11502.

award of a posthumous VC. The Admiralty Honours and Awards Committee noted Vian's recommendation, and the VC was awarded.⁶² Interestingly, Vian added that the award was fitting because of the part that Canada had played in training Empire airmen during the war.

The Pacific Theatre in the Second World War

- 4-60 After the outbreak of war with Japan in December 1941, some Australian ships continued to serve under RN command (such as those based on Singapore), as described in the preceding paragraphs. But others served on the Australia Station, serving under the command of the ACNB. When the Allied South-West Pacific Area was formed in April 1942, all the Australian vessels on the Australia Station were assigned to the Commander Allied Naval Forces (an American admiral). But for matters of administration, including the recommendation of honours, the ships remained under the command of the ACNB.
- 4-61 The problems of uniformity and maintenance of standards among a large number of separate theatre commands in the RN, compared with the smaller number of theatre commands in the Army, led the Admiralty to establish a centralised committee approach after the First World War. The British Government believed that because some RAN ships operated as part of RN fleets under RN commanders-in-chief it was important that all recommendations for honours be submitted to the British Admiralty to 'ensure uniformity of standard of awards'.⁶³
- 4-62 In September 1942 the Australian Government asked the Australian Defence Committee⁶⁴ whether it might consider changing the arrangements so that naval recommendations would be passed through Australian Government ministers. The Defence Committee accepted the strong opposing argument by the Chief of Naval Staff⁶⁵ (Vice Admiral Sir Guy Royle, RN) that Australia should continue to follow the Royal Navy system. The government did not press the matter. Rather, the Defence Committee confirmed the existing practice, whereby recommendations from RAN ships on the Australia Station and in the South-West Pacific Area were submitted by the Secretary of the (Australian) Department of the Navy direct to the Admiralty.⁶⁶ That is, unlike the case of the Army and the RAAF, the recommendations were not submitted through the Australian Prime Minister to the King. The Australian Government and the Governor-General were not involved. At the Admiralty, the Honours and Awards Committee dealt with all VC recommendations.⁶⁷
- 4-63 With regard to internal RAN procedures, on 17 February 1942 the Australian Chief of Naval Staff, Vice Admiral Royle, RN, issued Commonwealth Navy Order 43/42, [CNO43/42], which instructed commanding officers that when making recommendations for honours and awards (not just for VCs) 'the nature of the

62 Minute, Vice Admiral Vian to Commander-in-Chief British Pacific Fleet, 13 September 1945, TNA: ADM 1/24300.

63 Cable 427, From the Secretary of State for Dominion Affairs, to Australia, 21 May 1942, NAA: A703, 138.

64 The Committee consisted of the chiefs of the three services and the Secretary to the Department of Defence.

65 The Chief of Naval Staff was also the First Naval Member [of the Australian Commonwealth Naval Board].

66 Defence Committee Minute, 14 September 1942, NAA: A703, 138.

67 For examples of the procedure for gallantry awards in 1945, see the recommendations for HMA Ships *Manoora*, *Kanimbla* and *Westralia*, in TNA: ADM: 1/30505.

award is not to be suggested'.⁶⁸ This was a variation of the RN procedure, by which RN commanders used Form 58 (as noted in paragraph 4-59), allowing for two categories: 'decoration' (nature of award not specified) and MID. Within the RAN there was no actual form (in contrast to the RN). However, CNO43/42 stated clearly that recommendations were to include:

- a. full names, ranks or ratings and official numbers;
- b. the precise nature and quality of the action, enterprise, conduct or achievement commended should in each case be clearly defined; and
- c. decorations already held.

Contrary to some submissions (e.g. by Mr John Bradford — Submission 86), which claimed that the procedure instituted by Admiral Royle was vastly different from the system in the RN, the system in the RAN was only slightly different in its intent. However, in practice, the lack of a proper RAN form, and the inability to distinguish between a recommendation for an honour (nature not specified) and an MID made it more difficult for a RAN commander to ensure his personnel received what he considered to be the appropriate honour. A RAN commanding officer could still nominate one of his personnel for a VC, but in doing so he would need to provide appropriate evidence and an appropriately worded citation, yet still not nominate the nature of the award.

4-64 An examination of the awarding of honours to RAN personnel on the Australia Station leads to a conclusion that the ACNB showed little initiative to ensure that its personnel were properly recognised. In November 1943 Captain Harry Howden, RAN, Captain of HMAS *Hobart*, wrote to the Naval Board, to bring to attention the fact that:

No Honours or Awards, British or Dutch, have been made to any British Naval personnel serving afloat in the operations against the Japanese Naval Forces in the Java Seas in the period preceding the investment of Java early in 1942.⁶⁹

In early 1945, following representation by the Commander of the Australian Squadron, Commodore Harold Farncomb, RAN, the RN system of using Form 58 was finally adopted in the RAN in the Pacific and on the Australia Station. Farncomb complained that the definitions of the terms 'Immediate', 'Operational' and 'Periodic', were not set forth properly in the appropriate instructions, and he noted that there had been 'very few periodic honours awarded to personnel in the RAN during the war, specifically for war service ... I note with regret that RAN ratings have scarcely ever received recognition in the periodic category, except when recommended by RN officers for service abroad'.⁷⁰

The Vietnam War

4-65 The procedure for recommending awards to RAN members who served ashore during the Vietnam War differed from those serving at sea. Those ashore were

68 Commonwealth Navy Order 43/42 [CNO43/42], 17 February 1942, www.navy.gov.au/sites/default/files/documents/Commonwealth_Naval_Orders_1942.pdf, viewed 5 November 2012.

69 Letter, Captain Howden to Secretary, Naval Board, 25 November 1943, AWM: Private record 145 — Howden, Harry Leslie.

70 Minute, Commodore Farncomb to Secretary, Naval Board, 22 January 1945, NAA: MT1214/1, 448/201/2002. For examples see the recommendations for HMA Ships *Manoora*, *Kanimbla* and *Westralia*, in TNA: ADM: 1/30505.

treated like members of the Army and RAAF, such that recommendations for honours and awards for both gallantry and distinguished service were forwarded to Commander Australian Force Vietnam (COMAFV) — or the Senior Naval Staff Officer in Saigon who was part of COMAFV's staff. This applied to members of the RAN Helicopter Flight Vietnam (RANHFV) and RAN Clearance Diving Team 3. Recommendations then went from COMAFV to the Chief of Naval Staff (CNS) for his consideration. RAN members serving at sea had their recommendations sent to the Flag Officer Commanding Her Majesty's Australian Fleet and then on to the CNS.⁷¹

Honours and awards for servicemen missing in action and prisoners of war

- 4-66 Two of the 13 former servicemen included in the Terms of Reference (Stoker and Cleary) were prisoners of war. If another, Waller, was to be considered, his recommendation would have depended on statements from former members of the crew of HMAS *Perth* who themselves were prisoners of war until toward the end of 1945. An MID was awarded posthumously to Captain Waller for his actions during the Battle of the Sunda Strait, in which HMAS *Perth* was sunk.⁷² Under the Imperial system of Defence honours and awards, as it had evolved by the end of the First World War, particular rules had been developed allowing for the making of awards to servicemen missing in action and prisoners of war.
- 4-67 In a letter to the Australian Minister for Veterans' Affairs dated 10 January 2002, the Parliamentary Undersecretary of State for Defence and Minister for Veterans' Affairs of the United Kingdom said, among other things, 'The general principle of making rewards to soldiers for services rendered in captivity or in attempting to escape or escaping from captivity dates from the First World War'.⁷³
- 4-68 This policy was set out in an Army Order published on 5 May 1919 by the War Office in the United Kingdom, in which the Army Council indicated that awards to prisoners of war:
- may be considered appropriate, provided that no blame has been attached to the individual in respect of original capture where:
 - a) exceptional service had been rendered by officers and soldiers whilst prisoners of war or interned; or
 - b) exceptionally gallant conduct and/or determination displayed by officers and soldiers in escaping or attempting to escape captivity.⁷⁴
- 4-69 In his letter of 10 January 2002, the Parliamentary Undersecretary went on to say that, following research in the United Kingdom, including consideration of individual recommendations and awards made, not all those prisoners of war who escaped automatically received awards, and no papers were found in the United

71 Department of Defence, Submission 235, Attachment 1.1, p. 12.

72 *London Gazette*, no. 37505, 15 March 1946, p. 1440.

73 Letter, dated 10 January 2002 attached to Defence's submission to the Defence Honours and Awards Tribunal Inquiry into recognition for Far East Prisoners of War Killed While Escaping. VCDF/OUT/2009/470, 23 July 2009.

74 *ibid.* Attachment A.

Kingdom that would confirm the automatic granting of an MID to escapers killed while attempting to escape.

4-70 The policy set out in the 1919 Army Order was applied with some refinements during the Second World War on a uniform basis to all of the three services (War Office, Admiralty and Air Office) in the United Kingdom. This revised policy (October 1942) provided for those servicemen who showed outstanding performance — for example, by escaping from prisoners of war camps, to be eligible for ‘the same gallantry distinctions as are normally reserved for service under fire’. Whether or not an award was made, and at what level, was to be determined on the basis of post-escape interviews with the individual concerned and others who had intimate knowledge of his actions. Additional grounds for consideration for higher honours were given to those who:

- escaped after previous unsuccessful attempts; or
- escaped when wounded; or
- escaped alone; or
- persisted in the attempt to escape when companions had thrown in their hands; or
- acted as the leader of an escape party; or
- brought back valuable information, etc.⁷⁵

4-71 Towards the end of 1943, the relevant Defence Honours and Awards Committees in the United Kingdom confirmed a further change in policy determined by the Imperial Prisoners of War Committee (10 November 1943), which provided that prisoners of war who were killed while trying to escape should be regarded as specifically eligible for consideration for the award of a posthumous MID. To ensure a uniform system was adopted for dealing with such cases across all Imperial Forces it was decided that the procedures would be as follows.

1. The Directorate of Prisoners of War [UK] to collect information from all sources concerning all prisoners of war killed while attempting to escape.
2. This information would be passed on in the case of dominion, Indian or colonial personnel to the dominion representative concerned or to the India or Colonial Office for confirmation or for further information.
3. The Directorate of Prisoners of War would then decide in the light of all the evidence available whether the escape should be considered as genuine and if it is considered genuine should submit the facts to the Honours and Awards Branch of the Service concerned or to the dominions, colonial or Indian representative for consideration for an award. The decision whether or not a recommendation for an award should be made will be in the sole discretion of the Honours and Awards Branch of the Service concerned or of the dominions, colonial or Indian Forces.⁷⁶

4-72 This change in Imperial policy was considered by the Australian Defence Committee, which, on 16 February 1944, noted that: ‘The same consideration

⁷⁵ Attachment D to Defence’s submission to the Defence Honours and Awards Tribunal Inquiry into Recognition for Far East Prisoners of War Killed While Escaping. VCDF/OUT/2009/470, 23 July 2009.

⁷⁶ War Office Paper no. PWCA/P[43]67, 10 November 1943, attached to letter, RD Wheeler, Australia House London, to Secretary, Department of the Army, NAA: A816, 66/301/60.

should be given to prisoners of war belonging to the RAN, Australian Military Forces and Royal Australian Air Force who are killed while trying to escape'.⁷⁷ The United Kingdom authorities were informed of this decision on 21 February 1944.⁷⁸

4-73

On 17 March 1944, following the Defence Committee's deliberations, Australian authorities sought confirmation of procedures from the United Kingdom concerning recommendations being held at that time in Australia and the United Kingdom for awards to Australians — either prisoners of war or missing. The Australian authorities queried whether, if further recommendations were to be made in favour of personnel who were prisoners or missing in the South-West Pacific Area, should they be held by Australian Service Departments [rather than up till this point being forwarded to the War Office, etc. in London] until action could be taken through the Governor-General exercising the considerable delegations he then held with respect to action in the South-West Pacific.⁷⁹ The authorities in the United Kingdom replied:⁸⁰

- that the pool of personnel from Imperial Forces who are missing or prisoners of war recommended for awards is kept in the War Office, etc.;
- recommendations are proceeded with when information is received that an individual serviceman has been repatriated or has rejoined his unit;
- that as had occurred at the end of the First World War a committee would be set up to consider recommendations and it would be of assistance to the committee if those recommended had been considered by those who know the requisite standards of gallantry required for various awards; and
- suggested that the 20-odd Australian recommendations and any further should be forwarded to the War Office, etc. so that they may be treated as described.

It would appear from the Australian records available that this approach was adopted by the Australian authorities, although there is some ambiguity in those records.

4-74

Following Australia's acceptance of the 1943 policy, a nominal roll was compiled for the Australian Military Secretary of those military personnel eligible for consideration for the grant of a posthumous MID. This nominal roll was submitted to the Australian Commander-in-Chief as an attachment to a memorandum dated 10 June 1945, which suggested that MIDs should be made to the 'former PsW (sic) who were in Japanese hands and were killed'. This memorandum was endorsed 'Hold' and dated 25 July 1945.⁸¹

4-75

Two of the names on the list of 21, Captain A Mull and Sergeant CE Danaher, were awarded MIDs, notified in the *London Gazette* by the War Office on 1 August 1946.⁸² Corporal RE Breavington was also awarded an MID, notified by the War

77 Defence Committee Minute, 16 February 1944. NAA: A816, 66/301/60.

78 Cable, Prime Minister's Department, Canberra, to High Commissioner, London, 21 February 1944, NAA: A816, 66/301/60.

79 Cable, Prime Minister's Department, Canberra, to High Commissioner, London, 22 February 1944, NAA: A816, 66/301/60.

80 Cable, High Commissioner, London, to Prime Minister's Department, Canberra, 17 March 1944, NAA: A816, 66/301/60.

81 Minute paper and attachments, 10 June 1945: AWM 119, 122.

82 *London Gazette*, no. 37671, 30 July 1946, p. 3922.

Office in the *London Gazette* of 4 March 1947.⁸³ No records have been found suggesting that Gunner Cleary was ever nominated for an award. Likewise, there were no awards made to any of the others on the 1945 nominal roll. This outcome was not inconsistent with outcomes in examples of British and Dominion recommendations included as attachments to the Parliamentary Undersecretary of State for Defence's letter of 10 January 2002.⁸⁴

4-76 The policy on honours and awards for prisoners of war continued to apply under the Imperial system in Korea, the Malayan Emergency, Confrontation and Vietnam. For example, in Korea, a George Cross was awarded posthumously to Private Horace William 'Slim' Madden, recognising his personal courage and leadership that he showed to others in resisting all attempts by his North Korean captors to have him become a collaborator. He died in the camp of malnutrition and ill-treatment in November 1951.⁸⁵

4-77 Under the present policy applying to the Australian Defence Force, members who become prisoners of war (POWs) may be nominated for awards for actions or service prior to becoming captured, during captivity or as escaped POWs. Such nominations are to be forwarded through the operational chain-of-command to the Chief of Joint Operations (CJOPS). The CJOPS will advise the CDF of the details of the nomination and pass the nomination to the parent service headquarters, which will:

- a. retain the nomination for further consideration at the end of hostilities;
- b. ensure that the nomination records the date that the member became a POW; and
- c. monitor the latest information available and, if the captured member returns to service, or is confirmed killed, forward the nomination to the CDF for consideration.

Honours for gallantry and distinguished service may be awarded to members for actions or service in captivity or as escaped POWs.⁸⁶

⁸³ *Supplement to the London Gazette*, no. 37898, 4 March 1947, p. 1099.

⁸⁴ Attachments B and C to Defence's submission to the Defence Honours and Awards Tribunal Inquiry into Recognition for Far East Prisoners of War Killed While Escaping.. VCDF/OUT/2009/470, 23 July 2009.

⁸⁵ *London Gazette*, no. 40665, 27 December 1955, p. 7299.

⁸⁶ *Defence honours and awards manual*, chapter 7, paragraph 7.14.

CHAPTER FIVE

THE AUSTRALIAN HONOURS AND AWARDS SYSTEM

5-1 The preceding chapter outlined the procedures for the award of the Imperial Victoria Cross and other honours for gallantry. However, between 1975 and 1992, successive Australian governments introduced the Australian honours and awards system, and, by the latter date, the Australian Government ceased recommending Australians for Imperial awards. There are several major differences between the Imperial and Australian honours and awards systems:

- Under the Australian system there is no difference between the awards in each service; awards for gallantry and distinguished service are the same for the Navy, the Army and the Air Force.
- Awards for gallantry in the Australian system are made irrespective of the rank of the individual. Whereas, in the Imperial system, for example, an RAN officer recognised in action for a level three honour was awarded a Distinguished Service Cross (DSC) and a sailor a Distinguished Service Medal (DSM), under the Australian system, both would be awarded a Medal for Gallantry (MG).
- Under the Australian system, the distinction between awards for gallantry and distinguished service were made clearer. Under the Imperial system, the Distinguished Service Order (DSO), a level two honour, was awarded for conspicuous gallantry and leadership by officers in action. Under the Australian system the level two honour for gallantry in action is the Star of Gallantry (SG), while distinguished command and leadership in warlike operations is recognised by the DSC. Distinguished leadership in warlike operations is recognised by the DSM, a level three award.¹ Similarly, under the Imperial system, Mention in Despatches (MID) (a fourth level award) could be awarded for an act of bravery or for continuous good work over a long period. Under the Australian system, the fourth level award for gallantry in action is the Commendation for Gallantry, while distinguished service in warlike operations is recognised by the Commendation for Distinguished Service.
- Under the Imperial system, only the Victoria Cross (VC) and the MID could be awarded posthumously for actions in the presence of the enemy. Under the Australian system, all Defence honours can be awarded posthumously.
- The Imperial system applied an operational scale for honours. In the Australian system, quotas no longer apply to gallantry decorations or distinguished service decorations.

5-2 The hierarchy of awards for gallantry within the Imperial and Australian honours and awards systems are shown in Table 5-1, which also shows which Imperial awards are equivalent to Australian honours and awards. A more detailed table showing the criteria for the awards is in Appendix 6, including the Australian distinguished service awards for warlike operations.

¹ Before 22 February 2012 the criteria for second level honours for distinguished service referred to 'in action' rather than 'warlike operations'.

Table 5-1 Imperial and Australian gallantry awards²

Level	Recipient	Imperial awards			Australian gallantry awards
		Navy	Army	Air Force	
1	Officer / WO / Other Ranks	 Victoria Cross	 Victoria Cross	 Victoria Cross	 Victoria Cross for Australia
2	Officer	 Distinguished Service Order	 Distinguished Service Order	 Distinguished Service Order	 Star of Gallantry
	WO / Other Ranks	 Conspicuous Gallantry Medal	 Distinguished Conduct Medal	 Conspicuous Gallantry Medal (Flying)	 Star of Gallantry
3	Officer / WO	 Distinguished Service Cross	 Military Cross	 Distinguished Flying Cross	 Medal for Gallantry
	WO / Other Ranks	 Distinguished Service Medal	 Military Medal	 Distinguished Flying Medal	 Medal for Gallantry
4	Officer / WO / Other Ranks	 Mention in Despatches	 Mention in Despatches	 Mention in Despatches	 Commendation for Gallantry

WO = Warrant Officer

Images source: Australian Government Department of Defence, *Defence honours and awards*, www.defence.gov.au/medals, viewed 20 November 2012.

² Noel Tanzer, Major General Peter Phillips & Clive Mitchell-Taylor, *Report of the independent review panel of the end of war list — Vietnam*, Department of Defence, Canberra, 1999, p. 19, www.defence.gov.au/medals/Content/+060%20Reviews%20and%20Reports/Vietnam_Report.pdf, viewed 11 January 2012. Also known as the Tanzer Review. Exact comparisons are not always possible.

Australian awards for gallantry to foreign personnel

- 5-3 The Tribunal noted that under the Australian honours and awards system, foreign service personnel are eligible to receive Australian gallantry awards. The Tribunal heard submissions from the Department of Defence that this was current policy, and that at least one US serviceman had received an Australian gallantry award for service with Australian forces in Afghanistan.³

Relevant rules and administrative processes for awarding the Victoria Cross for Australia

- 5-4 The 'Victoria Cross for Australia' was created under Letters Patent by Queen Elizabeth II on 15 January 1991 and promulgated in the *Commonwealth of Australia Gazette*, no. S25, of 4 February 1991, with a schedule setting out the Victoria Cross (for Australia) Regulations. The fact that the name Victoria Cross was retained indicated that the Australian Government considered that the VC for Australia should be held in the same standing and value as the Imperial VC.⁴ It should also have the same meaning to the nation.
- 5-5 The VC for Australia may be awarded to members of the Australian Defence Force and other persons determined by the Minister for Defence. The award of the decoration is made, with the approval of the Sovereign, by an Instrument signed by the Governor-General on the recommendation of the minister.
- 5-6 Under the conditions for the award of the decoration, the VC for Australia 'shall only be awarded for the most conspicuous gallantry or a daring or pre-eminent act of valour or self-sacrifice or extreme devotion to duty in the presence of the enemy'. That is, the requirements are the same as those applying to the Imperial VC. It also should be noted that the VC for Australia is made of the same metal as the Imperial VC, cast from the bronze cascabels of two cannon captured during the Crimean War. Further, it features the same ribbon and has the same design as the Imperial VC and recipients are invited to be members of the Victoria Cross & George Cross Association.
- 5-7 As noted in paragraphs 4-18 and 4-19, neither the Letters Patent for the VC nor for the VC for Australia specify any particular process for authentication of a commander's recommendation. As was generally the case for the VC under the Imperial system, the *Defence honours and awards manual* dealing with recommendations for the VC for Australia state that at least three eyewitness statements are required and nominations are to be staffed through the chain of command to Chief of Joint Operations (CJOPS) and Chief of the Defence Force (CDF), irrespective of whether they are supported or not.⁵

3 Oral submissions by Department of Defence officials, Public Hearing Canberra, 31 May 2012.

4 In writing to the Governor-General, the prime minister said that the VC for Australia 'will take the highest place alongside its Imperial counterpart in the Australian order of precedence of Honours and Awards.' (Letter, Prime Minister Hawke to Governor-General Hayden, 7 December 1986, Department of the Prime Minister and Cabinet Records.) The prime minister's press statement of 26 January 1986 stated that 'In view of the historical importance of the Victoria Cross to Australians, the decoration will remain as the highest award for gallantry in action'.

5 *Defence honours and awards manual*, Chapter 6, Annex A.

5-8

The present system for recommending the VC for Australia in the Australian Defence Force (ADF) is similar to the system applying for the Imperial VC in previous years, but with a few important differences.⁶ These days, it is likely that the commanding officer will discuss the recommendation with the task force commander before it is forwarded through the chain of command. The present process for honours is as follows:

- Tactical commanders nominate their personnel after acts of gallantry or distinguished service, and submit their recommendations to their higher headquarters. The commander of the deployed element (e.g. the commanding officer of the Mentoring Task Force or the Special Operations Task Group) conducts a formal board to consider all nominations. This board includes senior tactical commanders, principal staff and the Regimental Sergeant Major of the unit. The commander then finalises his or her nominations and submits them to the next higher headquarters (e.g. Joint Task Force 633). A similar board process is undertaken and final nominations are then referred to Headquarters Joint Operations Command (HQ JOC).
- The CJOPS chairs the JOC Honours Board, which includes the Deputy CJOPS, the Special Operations Commander, the Commander Deployable Joint Force Headquarters, the Directors General Maritime and Air (from HQ JOC), the Commander Border Protection Command, the Warrant Officer JOPS, and the Staff Officer Honours and Awards. If the CJOPS agrees with the board's recommendation, he forwards the recommendation to the CDF. The CDF reviews the recommendation and, if he agrees, forwards it to the Minister for Defence. In the case of the VC, the recommendation goes to the Prime Minister for consideration and, if supported, it goes to the Governor-General. The Tribunal was advised that, in the same manner as Imperial VCs, some recommendations have been downgraded.⁷ In like fashion, other lower awards have been upgraded. If a recommendation for a VC is downgraded, its lower recommendation is considered with all other recommendations in the next periodic (six-monthly) meeting of the Honours Board.
- The tiered board process allows each level to consider the nominations on merit alone, based on the information as presented. Board members may recommend that the nomination be accepted as written, be upgraded to a higher level or downgraded to a lower level. The chair of the board is the final decision-maker. Higher level boards are not advised of the full deliberations at the lower level, but are aware that recommendations have been upgraded or downgraded.⁸ The JOC Honours Board only considers the final nominations recommended by the Commander Joint Task Force 633.

An evolving system

5-9

The rules and regulations for Defence honours and awards are set out in the Letters Patent and other prerogative instruments, and the administrative

⁶ The procedure is outlined in 'Headquarters Joint Operations Command Standard Operating Procedure 4.03 Honours and Awards'.

⁷ Oral submissions by Defence Department officials, Public Hearing Canberra, 1 December 2011.

⁸ Oral submissions by Defence Department officials, Public Hearing Canberra, 31 May 2012.

arrangements are included in the *Defence honours and awards manual*. The system is still evolving. The sorts of actions for which particular honours might be awarded — that is, the accepted standards and expectations — will only be understood more widely as the system becomes more mature. The Australian system is not the same as the British Imperial system except for one crucial aspect: namely, it is accepted that the VC for Australia should be held in the same standing and value as the Imperial VC.

- 5-10 In his evidence, the Chief of Navy suggested that there was a need for a philosophical discussion about the nature of the VC for Australia. He noted that the VC grew out of land operations, and that considering the nature of modern naval operations, with units engaged at great distances, in the future it might not be possible for a VC for Australia to be awarded to an RAN member for operations at sea. However, he was personally involved in the process by which one of the recent VCs for Australia was awarded, and he was strongly opposed to retrospective recognition.⁹ That is, by implication, he was stating that the Inquiry was not the place to set new parameters for the award of the VC for Australia, and the VC for Australia should be awarded for those sorts of actions that the Australian community in the past have come to accept. The evolution of the Australian system will be influenced by the changes in Australian community attitudes as described in paragraphs 3-12 to 3-20, but the development of the Australian system is likely to be incremental and slow, reflecting the ADF's desire to maintain the integrity of the system and to ensure that it retains its acceptance and standing at a high level. This issue is explored further in paragraph 8-3.
- 5-11 A further evolution in the system has been the establishment of the Defence Honours and Awards Appeals Tribunal. In the past, Defence honours were completely discretionary, being based solely on informed judgements by respective commanders in the chain of command leading to recommendations to the government and the Sovereign. Although Defence honours are still discretionary in the sense that there is no 'entitlement', the decisions by which they are awarded can be subject to review by the Tribunal (see paragraphs 2-5 to 2-8). In addition (as explained further in paragraph 6-26), the Parliament can pass a valid Act directing the Minister for Defence to recommend to the Governor-General the award of an honour to an individual or group of individuals. This means that the awarding of Defence honours in the Australian system is not the sole prerogative of the military. The *Defence honours and awards manual* should be amended to reflect these changes.

⁹ Evidence of Vice Admiral Ray Griggs, AO, CSC, RAN, Canberra, 31 May 2012.

Summary of requirements for the award of the Victoria Cross and Victoria Cross for Australia

- 5-12 The requirements to be met before a VC can be awarded include the following:
- It can only be awarded for most conspicuous gallantry or some daring or pre-eminent act of valour or self-sacrifice or extreme devotion to duty in the presence of the enemy.
 - The preceding requirement rules out actions while a prisoner of war or when not in combat with the enemy.
 - Although Army and, later, ADF instructions required that the action should be verified by three witnesses who give their evidence under oath and sign their statements, this was not mandated in the Navy and Air Force.

CHAPTER SIX

END OF WAR LISTS AND REVIEWS

6-1 Over the past century, by the use of end of war lists and reviews, governments have bestowed certain retrospective awards many years after the actions for which they were 'earned'. This chapter describes how these end of war lists and reviews were used, and how they might inform consideration of retrospective awards in the present Inquiry.

Review of First World War awards

6-2 In December 1918 instructions were circulated seeking final recommendations for honours for services rendered during the latter part of the First World War. These were to be promulgated in a 'Peace' Gazette for the King's Birthday in June 1919 and to coincide with the signing of the peace treaty in Versailles. Recommendations were to include:

- a. services rendered from mid-September to 31 December 1918;
- b. those officers and men whose names had been held over for future consideration; and
- c. those whose services rendered during the period covering the New Year's Gazette of 1919 had been brought to notice subsequent to the closing of that despatch.¹

6-3 Thousands of officers and men (from all over the Empire) and their awards were subsequently listed in the *London Gazette* for the Birthday Honours of the King in June 1919. One Australian example is Captain Alfred James Jessep, 5th Australian Division Engineers, who was recommended for and subsequently made a Member of the Order of the British Empire (MBE). His MBE was promulgated in the *London Gazette* on 3 June 1919².

Review of Second World War awards

6-4 As with the First World War, the purpose of the Second World War end of war list was to finalise honours that were still in the process of recommendation or had been overlooked. It was not designed to revise awards already made. Most Imperial gallantry awards for the Second World War were promulgated by the end of 1946. The major exception was the last Australian list, with nearly 500 orders, honours and medals and nearly 1,900 Mentions in Despatches (MID), which was published in the *London Gazette* on 4 March 1947.³ The delay in London was caused by typographical errors, duplicate awards or, in the case of the Order of the British Empire, where someone was recommended for appointment to a level above or below his or her rank. Much to the frustration of Australia, the British held up entire batches until all queries were resolved. Between 14 March 1947

1 Letter [74/586], 2nd Australian Divisional Headquarters to all elements of the Division, 14 December 1918, AWM4, 1/45/37 part 2.

2 *Twelfth Supplement to the London Gazette*, no. 31377, 3 June 1919, p. 7004.

3 Anthony Staunton, 'Decision not to reopen Second World War awards', a paper prepared for the Tribunal; *Supplement to the London Gazette* no. 37898 of 4 March 1947, pp. 1085-1101.

and 11 February 1949 there were a further 31 gallantry awards (6 Military Crosses [MCs], 2 Distinguished Flying Crosses [DFCs], 2 Distinguished Conduct Medals [DCMs] and 21 Military Medals [MMs]) and 70 MIDs (51 Army and 19 RAAF). The last awards were to be gazetted on 11 February 1949, but an error in submitting names saw a final award to Australia for the Second World War on 6 October 1950, which was backdated to 11 February 1949.⁴ The final Second World War award was the posthumous Victoria Cross (VC) to British Army Lieutenant George Cairns, whose 1944 recommendation had been lost in an aircraft crash in which his superior commander, Major General Orde Wingate, had been killed. The award was gazetted on 20 May 1949, five years and two months after Cairns died of wounds in Burma.

6-5 The Second World War end of war list provided a final opportunity for the services, including the RAN, to make recommendations for personnel who might have been overlooked during the war. In the case of HMAS *Perth*, after the return of the survivors who had been prisoners of war, recommendations, based on the accounts of those survivors, were made by the Australian Commonwealth Naval Board (ACNB) to the Admiralty for recognition of a number of survivors. A letter was sent from the ACNB recommending 4 officers and 12 ratings for gallantry and outstanding devotion to duty in *Perth*. The ACNB also put forward one officer and five ratings for their skilful and devoted care of the wounded after the action. Neither of these lists included a recommendation for Captain Waller or any other deceased members of *Perth*. In response, the Admiralty signalled the ACNB asking if Captain Waller should be considered for a posthumous MID if assumed dead. The ACNB responded to the effect that notification of presumption of death of missing personnel from *Perth* was being made in three days' time and that they would be glad of favourable consideration of a posthumous MID for Captain Waller.⁵

6-6 With the finalisation of the Second World War end of war list, King George VI decided that there would be no further awards for service in the Second World War. Following his death in 1952, an attempt was made to reopen such awards. The new sovereign, Queen Elizabeth II, then reaffirmed the King's decision not to reopen the matter.⁶ On 3 October 1979 the United Kingdom Military Secretary, Lieutenant General Sir Robin Macdonald Carnegie, wrote to the Australian High Commission as follows:

The British Government's decision in this matter is that there can be no further review of awards made for the 1939–45 War. This decision was taken in 1952 and was confirmed again about 1965. The question of recognition of services for the various Forces in the many operations that took place during the 1939–45 War was discussed very fully and carefully at the end

4 The British reference work *British gallantry awards*, in a footnote, said that a 1949 award 'is repeated with a different army number and a slight variation in spelling the Christian name', not realising these were two separate awards. PE Abbott & JMA Tamplin, *British gallantry awards*, Nimrod Dix & Co, London, 1981.

5 The chain of correspondence is retained in NAA: MP1049/5, 1944/2/199.

6 The Department of the Prime Minister and Cabinet has been unable to locate any correspondence supporting the statement that the Queen agreed in 1952 that there would be no further reviews. Letter, Peter Rush, Assistant Secretary, Honours, Symbols and Territories Branch, Department of the Prime Minister and Cabinet, to Chair, Defence Honours and Awards Appeals Tribunal, 18 April 2012.

of the war and to try to alter arrangements agreed then would only cause anomalies and throw out of balance the decisions made at that time.⁷

6-7 On 8 July 1983 the Official Secretary to the Governor-General wrote to Mr HE Keen, Assistant Secretary, Honours Secretariat, Department of the Special Minister of State, as follows:

A general decision taken by the late King in 1952, and which has remained in force ever since, precludes such permission being granted for any award for war services proposed after that date ... The hope was expressed that this convention would continue to apply equally in Australia as in the UK and elsewhere in the Commonwealth'.⁸

6-8 The Australian Government has never given any similar advice to the Queen.⁹

Special recognition for Gallipoli

6-9 In the lead-up to the 50th anniversary of the Gallipoli landings there were calls for the issue of a medal to Gallipoli veterans. Options included an emblem or clasp to the 1914–1915 Star; or a Gallipoli Star (which was designed in 1917 but never formally approved).¹⁰ In 1962, following representation from Australia, the United Kingdom Committee on the Grant of Honours, Decorations and Medals 'expressed strong objections to any special form of recognition which would indicate discriminatory treatment in favour of any individual contingent participating in the Gallipoli campaign'.¹¹ In April 1965 the Australian Government again sounded out the British authorities who reiterated the earlier advice that they did not favour a special medal or a clasp to an existing medal as the Australians 'contributed only three of the thirteen divisions deployed to the Gallipoli peninsula'.

6-10 To commemorate the 50th anniversary of the landings, commemorative postage stamps depicting Private John Simpson Kirkpatrick, and a special Anzac film were issued. In addition, Anzac Parade in front of the Australian War Memorial was completed in time for the 1965 Anzac Day Service, held in the presence of the Duke of Gloucester, representing the Queen.

6-11 In June 1965 the Australian Cabinet was advised of the approaches to the British authorities and the subsequent responses, and subsequently agreed to a suggestion from the then Minister for Defence, Senator Shane Paltridge, that an Australian Army emblem be developed, in the form of a letter 'A' on a background of the unit colour patch for wearing on a lapel badge.¹² The Commonwealth Art Advisory Board was asked to develop this idea for Cabinet consideration and, in

7 Letter, Lieutenant General Sir Robin Carnegie to Australian Defence Staff, 3 October 1979, Attachment 6 of the Defence submission to the Inquiry into Recognition for Far East Prisoners of War Who Were Killed While Escaping, received under cover of letter VCDF/OUT/2009/470, 23 July 2009.

8 Letter, David Smith to HE Keen, 8 July 1983: Department of Defence: DM 86/28572.

9 Letter, Peter Rush, Assistant Secretary, Honours, Symbols and Territories Branch, Department of the Prime Minister and Cabinet, to Chair, Defence Honours and Awards Tribunal, 18 April 2012.

10 The Gallipoli Star and its ribbon were designed in 1917 by RK Peacock, but official approval from King George V for the proposed campaign medal was withdrawn, after the ribbon (but not the medal) had been manufactured, because it was to have been presented only to Australians and New Zealanders, but not British or other Empire soldiers involved in the campaign. Australian War Memorial, 'Specimen Gallipoli Star: RE Smith', Australian War Memorial, cas.awm.gov.au/item/REL/18632, viewed on 19 October 2012.

11 Letter, Head, Australian Joint Services Staff, London, to Secretary, Department of Defence, 6 July 1962, NAA: A463, 1966/3979 part 1.

12 Cabinet submission no. 839, June 1965, NAA: A463, 1967/1574, and 1966/3979 part 2.

August 1965, provided a range of samples. In developing this idea, it was found that there were difficulties in narrowing down the choice of the colour patch (as there were up to 70 units serving at Gallipoli — each with their own patch — and also Navy personnel), so artistic ideas, including that of a medallion and scroll were also submitted for consideration. In October 1965 these ideas were considered by a Government Members Defence Committee, who favoured the medallion and lapel badge, but suggested that the views of the New Zealand Government also be sought.

- 6-12 In a press statement on 24 March 1966, the Minister for Defence, The Hon. Allen Fairhall, MP, announced that the design and issue of an Anzac commemorative medallion and lapel badge were being developed and discussed with the New Zealand Government.¹³ From March 1967 the Anzac Commemorative Medallion was issued, providing commemoration for all Gallipoli veterans and in particular for Private John Simpson Kirkpatrick, as it bears his image. The focus of this recognition was never Simpson. His name was not mentioned until the medallion was announced in 1967.

Post–Second World War reviews

- 6-13 After the Korean War, additional honours were awarded through the promulgation of a 'Ceasefire List', but the scale of the operations in the Malayan Emergency and Confrontation was such that it was considered that an end of war list was not necessary.
- 6-14 In 1972, at the end of Australia's commitment to the Vietnam War, the McMahon government decided not to create an end of war list. The reasons cited for not pursuing the issue were that members of the Australian Army Training Team Vietnam were still in the country, and that it could be seen as a celebration when there was, in fact, no decisive victory. This decision was upheld by the Whitlam government.¹⁴ In subsequent years, private members attempted unsuccessfully to have the Parliament pass an end of war list Bill, with the intention of establishing a tribunal to consider unrecognised acts of valour from the Vietnam War and subsequent military conflicts.¹⁵
- 6-15 After it was elected in 1996, the Howard government set up an interdepartmental committee (IDC) to consider awards that were recommended at the highest level in Vietnam, but were subsequently altered or struck out in Australia. By that time, the Imperial honours system had been replaced by a wholly Australian system. The Official Secretary to the Governor-General sought advice from Buckingham Palace as to whether awards for service in the Vietnam War, as determined by the IDC, could be made under the Imperial system.¹⁶ The Queen's Private Secretary replied that a firm decision had been made in 1992 that Australia would use its own comprehensive honours system in preference to Imperial honours. Accordingly, the Statutes for the Order of the British Empire had been amended

¹³ Statement by The Hon. Allen Fairhall, MP, Minister for Defence, 24 March 1966, NAA: A463, 1966/3979 part 2.

¹⁴ Ashley Ekins with Ian McNeill, *Fighting to the finish*, Allen & Unwin, Sydney, 2012, p. 1075.

¹⁵ See for example the speech by Mr R. Halverson. *CPD*, H of R, 14 February 1991, p. 593.

¹⁶ Letter, D Sturkey, Official Secretary to the Governor-General, to Sir Robert Fellowes, Buckingham Palace, 25 August 1996, NAA: A463, 1995/1596.

to reflect this decision, and he understood that the 1992 decision would apply to bravery and gallantry awards as well.¹⁷ The Governor-General advised the Prime Minister, John Howard, who stated that awards for the Vietnam end of war list would be made retrospectively from the Australian honours and awards system.¹⁸

- 6-16 As a result of this decision, the IDC was required to translate the original recommendations for Imperial awards to the nearest equivalent decoration in the Australian system, but in all cases no higher on the Order of Precedence (now the Order of Wearing). Through this process, and in a supplementary list, a total of 81 awards were offered under what was termed the Vietnam end of war list.¹⁹ This end of war list was quite different from that in previous wars, in that it was produced many years after the war and involved the revision of awards. Its purpose was to rectify an inequity caused by the quota system that applied in the Vietnam War. In terms of its nature, this review could be considered a process review rather than a merits review. The committee was not required to make a judgement about whether the individual's action merited a particular decoration, but merely to restore a decoration that had been recommended and then denied because of the quota system.
- 6-17 The IDC recommended that six former soldiers who had been recommended for the MM for gallantry in Vietnam, but whose award had been downgraded in Australia to an MID, be offered the Commendation for Gallantry. They declined the award, claiming that the equivalent of the MM in the Australian system was the Medal for Gallantry (MG). The government appointed a review panel to consider this issue and *The report of the Independent Review Panel of the end of war list — Vietnam* (the Tanzer Review), delivered in August 1999, recommended the award of the MG to the six soldiers. Again, this was a process review rather than a merits review. The panel's task was merely to ensure that the correct and appropriate relativities between the Imperial and Australian systems were applied.
- 6-18 The *Review of recognition for the Battle of Long Tan* (known as the Abigail Review) in March 2008 attempted to finalise an outstanding matter arising out of the Vietnam War.²⁰ The review recommended the award of a Star of Gallantry to Lieutenant Colonel (then Major) HA Smith, who had been recommended for a Distinguished Service Order for the Long Tan battle, but had been downgraded by the Commander Australian Force Vietnam (COMAFV) to an MC. The review also recommended that two other officers, who had been recommended for an MC but had received an MID, be awarded an MG. The difference between these recommendations and those from the end of war list is that the recommendations had been downgraded in South Vietnam by COMAFV, who was actually serving there, and not in Australia. This was the first time that a review panel had undertaken a merits review. The implications of this will be discussed later in this report.

17 Letter, Sir Robert Fellowes to D Sturkey, 14 September 1996, NAA: A463, 1995/1596.

18 Letter, Governor-General to Prime Minister Howard, 24 September 1996, with Howard's notation, 12 October 1996, NAA: A463, 1995/1596.

19 Noel Tanzer, Major General Peter Phillips & Clive Mitchell-Taylor, *The report of the Independent Review Panel of the end of war list — Vietnam*, Department of Defence, Canberra, 1999, www.defence.gov.au/medals/Content/+060%20Reviews%20and%20Reports/Vietnam_Report.pdf, viewed 11 January 2012.

20 Department of the Prime Minister and Cabinet, *Review of recognition for the Battle of Long Tan*, PM&C, Barton, ACT, 2008.

- 6-19 A further matter was addressed by the Defence Honours and Awards Tribunal (the old tribunal) in its *Inquiry into Unresolved Recognition Issues for the Battle of Long Tan*, September 2009, which recommended a DFC to Flight Lieutenant Cliff Dohle. As with the end of war list and the *Review of recognition for the Battle of Long Tan*, the tribunal's recommendations for the Battle of Long Tan were for awards within the Australian honours system.²¹ This was a process review, rather than a merits review.
- 6-20 In its report, the old tribunal also recommended that D Company, Sixth Battalion, the Royal Australian Regiment, be awarded a Unit Citation for Gallantry. Such an award was not available before 1991 and, therefore, could not have been recommended at the time of the action in 1966. This decision of the old tribunal could only have resulted from a merits review, not a process review.
- 6-21 In its *Report into recognition for Far East prisoners of war who were killed while escaping*, the old tribunal recommended awards within the Australian honours system.²² The old tribunal considered that this was a process review.
- 6-22 Three conclusions can be drawn from these reviews:
- None of the reviews suggested that awards should be made in the Imperial honours system.
 - Awards could be made in the Australian honours and awards system, even though that system was not in existence at the time of the conflict.
 - The precedent of these reports has important implications for issues concerning the retrospective awarding of honours or the revision of honours; this will be examined later in this report.

Conclusion concerning eligibility for the Imperial Victoria Cross

- 6-23 The preceding discussion leads to the conclusion that it is no longer possible for the Australian Government to recommend to the Queen the award of an Imperial VC. Based on Prime Minister John Howard's statement about the Vietnam end of war list (see paragraph 6-15), and the fact that awards were indeed made retrospectively using the Australian honours and awards system, the VC for Australia could be awarded retrospectively for an action by an Australian serviceman in the presence of the enemy provided, of course, that the other conditions were met. Further, through the *Defence Legislation Amendment Act [No. 1] 2010* (Cwlth) that established this Tribunal, the Tribunal has been given the power to recommend such a retrospective award.
- 6-24 The Department of Defence argued that if the Tribunal were to consider awarding a retrospective VC for Australia, the Prime Minister should ascertain the Queen's view before the Tribunal made a formal decision. This view was supported by

21 Report, Defence Honours and Awards Tribunal, *Inquiry Into Unresolved Recognition Issues for the Battle of Long Tan*, September 2009.

22 Report, Defence Honours and Awards Tribunal, *Report into recognition for Far East prisoners of war who were killed while escaping*, April 2010.

the claim that the Queen has the prerogative to decline to make an award.²³ In a further submission, Defence claimed that this view had been confirmed by the Department of the Prime Minister and Cabinet (PM&C).²⁴ However, PM&C advised the Tribunal that the VC for Australia 'is an Australian award, approved on the advice of the Australian Government, not an award in the Queen's personal gift.'²⁵ The Tribunal therefore proceeded on the basis that it has the power to recommend retrospective awards in the Australian system (including the VC for Australia) and that the government has the power to provide formal advice, including to the Queen, that these retrospective awards be made if it chooses to do so.

Attempts to legislate for retrospective and revised awards

6-25 On 4 April 2001, the Shadow Minister for Veterans' Affairs, Senator Chris Schacht (Australian Labor Party, South Australia), introduced a Bill, the Award of Victoria Cross for Australia Bill 2001, to award posthumously the VC for Australia to three members of the Australian forces: John Simpson Kirkpatrick, Albert (Neale) Cleary and Edward (Teddy) Sheean, for their actions in the First and Second World Wars.²⁶ Senator Schacht argued that an Act conferring a VC for Australia might be beyond the legislative power of the Parliament, but he believed that the 'naval and military defence of the Commonwealth' power under section 51(vi) of the Australian Constitution gave the Parliament authority to legislate with respect to honours and awards. In accordance with normal procedure, the debate was then adjourned. On 1 June 2001, Sid Sidebottom, ALP Member for Braddon, introduced the Defence Act Amendment (Victoria Cross) Bill 2001. The Bill was similar to the Senate Bill, and Sidebottom rejected the difficulty of retrospective awards, arguing:

The whole point of the honours system is to honour the deed, not to avoid it. I find the whole question of retrospectivity an interesting one when dealing with government's willingness or unwillingness to act on issues. Generally it is frowned upon and every argument is thrown up to avoid it — until, that is, it is politically expedient to justify it ... It is the political will that determines what happens, and we are calling for this to happen in this case.²⁷

Neither Bill was again debated before the 2001 Australian federal election was called. The issue was included by the then Opposition Leader, Kim Beazley, in his campaign in the following general election.²⁸ The Coalition won the election and the matter of awarding the VC for Australia through an Act of Parliament was not pursued further.

²³ Defence submission, attached to letter, General DJ Hurley, CDF, to Chair, Defence Honours and Awards Appeals Tribunal, 14 March 2012.

²⁴ Defence submission, attached to letter, General DJ Hurley, CDF, to Chair, Defence Honours and Awards Appeals Tribunal, 14 March 2012.

²⁵ Letter, Renee Leon, Deputy Secretary, Department of the Prime Minister and Cabinet, to Chair, Defence Honours and Awards Appeals Tribunal, 2 July 2012.

²⁶ *CPD*, Senate, 4 April 2001, pp. 23696-23699 (Chris Schacht).

²⁷ *CPD*, H of R, 1 June 2001, pp. 27120-27123 (Sid Sidebottom).

²⁸ Australian Labor Party, 'Labor to award the Victoria Cross for Australia to three war heroes', media release, 26 October 2001.

6-26 The Australian Government Solicitor has advised that if the Award of Victoria Cross for Australia Bill 2001 had been passed by Parliament, it would have been a valid law under the Australian Constitution. If passed, the Minister for Defence would have been bound to recommend the subject honours to the Governor-General.²⁹

²⁹ Letter, Leo Hardiman, Deputy General Counsel, and Charles Beltz, Counsel, Australian Government Solicitor, to Chair, Defence Honours and Awards Appeals Tribunal, 12 October 2012.

CHAPTER SEVEN

RETROSPECTIVITY, REVISION AND BELATED AWARDS

- 7-1 The central issue for the Tribunal to consider was whether it was possible and/or desirable to make a retrospective or revised award of a Victoria Cross (VC) (or for that matter any other award).
- 7-2 Before proceeding with this discussion, it is important to recognise that all awards are retrospective in that they are made after the event. As noted earlier, some awards might be 'immediate' (i.e. recommended straight after the event), while others result from periodic recommendations (i.e. recommended in a group at a set time, such as every six months). The term 'retrospectivity' was used commonly in the submissions before the Tribunal. For the sake of the discussion in this report, a retrospective award is considered to be one made many years after the event as a result of some later consideration. This might also be described as a 'late award' or even a 'delayed' award. Further, if a previous award has already been made and is to be changed at a later date (usually upgraded), this should be described as a revision of an award, rather than a retrospective award.

Previous cases of Victoria Cross retrospectivity — United Kingdom and dominions

- 7-3 The Tribunal next turned its attention to examining if a VC had ever been awarded retrospectively by the United Kingdom or any of the other dominions, and if so how long afterwards the honour was bestowed.

The United Kingdom

- 7-4 According to Mrs Didy Grahame, Secretary, Victoria Cross & George Cross Association (in London):
- Since 1947 it was ruled that decorations for gallantry and meritorious service for World War Two would only be awarded retrospectively in exceptional circumstances, i.e. where witnesses were unavoidably absent for a prolonged period (Prisoners of War, etc.). This policy continues to this day with no recommendation for such awards being considered more than five years after the date of the action(s).¹
- 7-5 Since the end of the Second World War, a number of British politicians and agitators have attempted to seek the Sovereign's approval for a retrospective VC. One notable example was a push to replace Lieutenant Colonel Paddy Mayne's fourth Distinguished Service Order (DSO) with a VC, with Ian Gibson, MP, raising the issue in the House of Commons in June 2005. The usual claims of British bias against Irishmen and unfair consideration came forth, but none were substantiated and the case was rejected.² Up to 2012, no case for a retrospective

¹ Submission 18, Mrs Didy Grahame, OBE, MVO, Secretary, the Victoria Cross & George Cross Association.

² United Kingdom, parliamentary early day motions, House of Commons, 14 June 2005, no. 317.

Imperial VC has been successful. Table 7-1 would seem to confirm this policy and illustrates that it was also applied before the Second World War.³

Table 7-1 'Retrospective' awards of the Imperial Victoria Cross

War	Number of Victoria Crosses awarded during the war	Number of Victoria Crosses awarded after the end of the war (year awarded)	
Boer War (1900–1902)	78	0	
First World War (1914–1918)	628	68	[12 Nov – 31 Dec 1918]
		42	[1919]
		0	[1920 on]
Second World War (1939–1945)	182	10	[16 Aug – 31 Dec 1945]
		3	[1946]
		0	[1947–48]
		1	[1949] [Cairns]
		0	[1950 on]
Korean War (1950–1953)	4	2	[28 Jul – 31 Dec 1953]
		0	[1954 on]

Canada

7-6 The Canadian government instituted its own honours and awards system progressively from 1967, and, in 1993, a 'new' VC was formally adopted when Queen Elizabeth II signed Letters Patent creating the Canadian Victoria Cross (Croix de Victoria). The only change from the Imperial VC is that the motto on the obverse has been changed from 'For Valour' to 'Pro Valore'.⁴ Like the VC for Australia, the Canadian VC requires the same standards and is held in the same regard. No Canadian VC has yet been bestowed. Canadian historian Hugh Halliday has extensively reviewed a number of claims for retrospective VCs in his book, *Valour reconsidered*, but, again, no retrospective Canadian claims have been successful.⁵

New Zealand

7-7 New Zealand instituted its own VC for New Zealand in 1999, with one awarded to Corporal Willie Apiata for action in Afghanistan in 2004.

7-8 The matter of retrospective VCs was raised in 2005/2006. Lance-Sergeant Haane Manahi, 28th Maori Battalion, New Zealand Military Forces, was recommended for a VC for bravery in Tunisia in April 1943, but the recommendation was downgraded

³ David Harvey, *Monuments to courage: Victoria Cross headstones and memorials*, The Naval & Military Press, Uckfield, UK, 2008, p. 753.

⁴ Canadian National Defence, 'Victoria Cross Gallery', Canadian National Defence, www.cmp-cpm.forces.gc.ca/dhh-dhp/gal/vcg-gcv/index-eng.asp, viewed 24 August 2012.

⁵ Hugh A Halliday, *Valour reconsidered*, Robin Brass Studio, Toronto, 2006.

to a Distinguished Conduct Medal (DCM), which was duly awarded (*London Gazette*, 22 July 1943). After Manahi's death in 1986, there was a move for his DCM to be revoked in favour of the VC. Manahi's tribe was able to use an aspect of the Treaty of Waitangi to argue that the permanent tribunal of inquiry (established under the Treaty of Waitangi Act 1975) should look into the case. The tribunal is charged with investigating grievances and making recommendations regarding omissions or errors by the Crown that breached the Treaty of Waitangi. In December 2005 the tribunal recommended that the New Zealand Government should attempt to have Manahi awarded a VC — either the Imperial VC or the VC for New Zealand. The New Zealand Minister for Defence took the matter informally to Buckingham Palace; there was no formal submission. In October 2006, the Queen (as Queen of New Zealand) again affirmed her previous decisions not to reopen the question of the Second World War awards. However, the New Zealand Minister of Defence announced that the Queen, in a personal letter, would acknowledge Manahi's gallantry and would present to New Zealand an altar cloth and a sword in his honour.⁶ At a ceremony in Rotorua on 17 March 2007, Prince Andrew, Duke of York, made the presentations on behalf of the Queen to Manahi's two sons.

Conclusion regarding Imperial Victoria Cross retrospectivity

- 7-9 After allowing up to five years for the return of prisoners of war (POWs), the conclusion of end of war lists and the finalisation of claims, the Tribunal found that, with the exception of the VCs presented to the Unknown Soldier of the US and Lieutenant George Cairns (see paragraph 6-4), to 2012, no Imperial or national VCs have been awarded retrospectively.
- 7-10 This discussion and evidence earlier in this Report has confirmed that it would not be possible for Australia to make a retrospective award of the VC in the Imperial system. Unlike the situation with the Imperial VC, no decision has been promulgated concerning retrospective awards of the VC for Australia, but the Tribunal concluded that it has the power to recommend retrospective awards in the Australian system (including the VC for Australia).

Views put in support of retrospective or revised awards

- 7-11 The views put to the Tribunal in support of a retrospective or revised award are summarised as follows:
- As time has passed, additional historical research has shown that certain individuals carried out extraordinary deeds, and these should be recognised by the Australian honours and awards system, which should evolve and adapt to facilitate this recognition.
 - The individual clearly performed an act or acts of conspicuous valour and would be a worthy recipient.
 - Members of Parliament and other prominent members of the Australian community support the award of the VC.

⁶ Phil Goff (Minister of Defence), 'God, king and country's, recognition from Queen for Manahi', media release, Parliament of New Zealand, Wellington, 9 October 2006.

- The awards would give a broad recognition to 'the contribution that our servicemen and women have made to Australia'.⁷
- Some former servicemen and ex-service associations support the award of a VC.
- Members of the individual's family believe he should be awarded the VC.
- No member of the RAN has ever been awarded a VC; RAN gallantry has been comparable with that of the RN, and, therefore, one or more VCs should be awarded.
- Because the Second World War Navy Order directed that the 'nature of the award is not to be suggested', and that all RAN recommendations, including those from the Australia Station, were to be submitted to the British Admiralty Honours and Awards Committee, the odds were stacked against an RAN officer or sailor receiving a VC. There is sometimes a suggestion of British bias against 'colonials'.
- Because only a VC or a Mention In Despatches could be awarded posthumously, if the individual was not awarded a VC he received what was perceived to be a very inferior award when an intermediate award might have been more appropriate.
- Documentary evidence allegedly exists to show that recommendations were made but, for unjustifiable reasons, were not progressed or acted upon.
- Comparable actions elsewhere resulted in the award of the VC.
- The individuals were not awarded the VC because of an accident of history and this injustice needs to be rectified.
- Although there appears to be no avenue for the retrospective granting of an Imperial award, a precedent has been established for retrospective awards in the Australian honours and awards system to people who undertook actions before the institution of the Australian system.
- Regardless of bureaucratic systems, acts of conspicuous valour need to be recognised.

These arguments are discussed later in the report.

Views put against retrospective or revised awards

7-12 In summary, the views put to the Tribunal against a retrospective or revised award are summarised as follows:

- Retrospective awards are no longer available to people who served in the First World War. In 1952 the Sovereign ruled that no further awards were to be made for the Second World War, and Britain expressed the hope that other British Commonwealth governments would comply.
- Since 1947, honours for gallantry and meritorious service during the Second World War have only been awarded retrospectively in exceptional circumstances — that is, where witnesses were unavoidably absent for a prolonged period (e.g. if they were prisoners of war).

⁷ CPD, Senate, 4 April 2001, pp. 23698 (Chris Schacht).

- Even if an individual appeared to be a worthy recipient, there is no avenue for retrospective granting of an Imperial award.
- The case for an award was considered by the relevant competent authorities of the day and current-day decision-makers should not attempt to overrule those authorities.
- Through the passage of time it is no longer possible to be sure, with indisputable evidence, exactly what happened in the action in which the individual was involved.
- While the rules concerning retrospective or revised awards within the Australian honours and awards system have not been spelt out, and indeed some awards have been made under special circumstances, the practice damages the integrity of the Australian honours and awards system (unless it is done to address a clear injustice).
- The rules and procedures by which VCs are awarded are quite specific (namely, where possible, three signed witness statements and forwarding through the chain of command) and these requirements were not met in any of the cases under review.
- Many servicemen have been recommended for the VC but have had that recommendation overturned by a higher authority. If the individuals under review were to receive awards, requests to award other worthy recipients would be made, leading to a never-ending search for allegedly worthy recipients.
- If Australia were to make retrospective awards it would destroy the concept that the Imperial and Australian awards were equivalent.
- Awards for gallantry are essentially peer awards, recommended by service personnel who were present during the action, and understood what was normal and what could be considered extraordinary during that action. Such awards should not be made by civilians who were not present at the time of the action.
- No system is perfect. For every VC recipient, there are many others who could have received the honour. There is nothing unique in a potentially worthy recipient not receiving an award; indeed, an honour is a discretionary award and as such will not cover every possible recipient in all circumstances.
- Generally, retrospective awards of honours tend to undermine the integrity of an honours system, unless it can be shown that the award was indeed recommended at the time and had been stopped or altered for an unjustifiable reason.
- While rules and practices that governed recommendations for the RAN might now, in retrospect, seem unfair and illogical, they were the rules that applied at the time and the Australian Government of the day did not see fit to change them.
- Today's standards cannot be applied to events and actions that took place in a completely different era.

- To honour someone retrospectively because of political or family pressure does a disservice to those worthy recipients who have not been considered.
- Just because no member of the RAN received a VC, that is not a valid argument as to why one should now be awarded.
- If more VCs were to be awarded, their existence would reduce the value of existing VCs and thereby do a disservice to the families of former recipients.

These arguments are discussed later in the report.

CHAPTER EIGHT

TRIBUNAL CONSIDERATION

- 8-1 Arising from the list of views for and against retrospective awards set out in the previous chapter, and from the Tribunal's own research, several issues required closer examination.

Desire for recognition

- 8-2 The most persuasive argument for awarding retrospective honours or revising previously awarded honours was that such a gesture would allow the community to recognise and honour extraordinary Australians who might otherwise not receive appropriate recognition. The proponents of this approach argued that the Australian honours and awards system should be adapted to this purpose, and that the practices of the old Imperial system were irrelevant to modern Australia.¹ Further, if the conditions for such awards were found to be too stringent, this could be overcome through an executive decision, or by an Act of Parliament. It was argued that such an approach would win widespread community approval. It was also argued that the US had awarded the Congressional Medal of Honor to recipients more than a century after the event, and that this had not lessened the standing of that medal.
- 8-3 The Tribunal considered this argument in the light of the changes in Australian community attitudes (paragraphs 3-12 to 3-20). Referring to the proliferation of medals, one submitter (Mr John Burrridge) claimed that Australia was 'teetering on third-world status', and stated colourfully that once a person obtains two medals, 'they breed thereafter'.² Other submissions expressed similar concern about the proliferation of medals.³ One Second World War and Korean War veteran stated that the extra medals he had received more recently for his earlier service were 'patronising and insulting — it is almost embarrassing'.⁴ Rear Admiral James Goldrick advised the Tribunal that the issues of recognition and awards were separate; an individual could be recognised without receiving a medallic award.⁵ The unique quality of medals for gallantry was summed up in the submission by Brigadier Chris Roberts (Retd) who pointed out that awards for gallantry in battle 'have always been a "contemporary peer" or professional colleague award'. The Victoria Cross (VC) is bestowed 'only when peers, operating in the same environment believe it is a quite exceptional case'.⁶ Hugh Mackay, the psychologist and social researcher, advised the Tribunal that 'every part of our society has become infected with the virus of self-promotion, obsessed with recognition'. Nonetheless, he stated that if awards were to retain their status,

1 This argument was put, in various forms, in submissions from former Senator Guy Barnett, Ms Jill Hall, MP, Brigadier Andrew Nikolic (Retd), Mr Robert Rankin, former Senator Chris Schacht and Mr Sid Sidebottom, MP.

2 Oral submission from Mr John Burrridge, Public Hearing Perth, 15 February 2012.

3 Oral submission from Mr Don Rowe, NSW RSL state president, Public Hearing Sydney, 8 February 2012, and from Major General David MacLachlan (Retd), Victorian RSL state president, Public Hearing Melbourne, 15 December 2011.

4 Oral submission from Mr Robert Brown, Public Hearing Adelaide, 14 February 2012.

5 Oral submission from Rear Admiral James Goldrick, AM, CSC, Public Hearing Canberra, 14 February 2012.

6 Submission 196, Brigadier CAM Roberts, AM, CSC, (Retd)

the institution providing the awards needed to be preserved, and one could not afford to 'give in' on this issue.⁷ The Tribunal did not, therefore, consider that the Inquiry was the place to set new parameters for the award of the VC for Australia, and concluded that in considering possible honours for the 13 named individuals it should apply the standards and expectations that have been understood by the Australian community in the past.

- 8-4 The Tribunal heard submissions that there were alternative forms for recognising individuals who did not meet the stringent requirements for gallantry medals, and these are discussed later in this report. With regard to the US Congressional Medal of Honor, several submissions pointed out that the process for recommending and awarding the Imperial VC and the VC for Australia was in the hands of military commanders and the government, not the Parliament (unlike the case of the US, where Congress awards the Medal of Honor). With these arguments in mind, the Tribunal was not persuaded by the claim that gallantry medals within the Australian honours and awards system and, in particular, the VC for Australia should be used to grant public recognition to individuals who had performed some act of gallantry but did not meet the stringent conditions for such an award.

Cases of apparent retrospectivity

- 8-5 The Tribunal heard submissions that Australian gallantry awards have already been bestowed retrospectively, and that this provided a precedent for awarding a VC for Australia retrospectively. There are at least four such cases; they were mentioned in paragraphs 6-13 to 6-21, but are examined further here. The first case concerns the Vietnam end of war list when, for example, personnel who had been recommended for the Military Cross (MC) but were downgraded to a Mention in Despatches (MID) in Australia were subsequently awarded the equivalent in the Australian honours and awards system, namely the Medal for Gallantry (MG). The Tribunal heard evidence that the Vietnam end of war list was different from those in previous wars in that it allowed a revision of previously awarded honours, even though the revision was in the narrow parameter of rectifying the problem of restrictive quotas during the Vietnam War. That is, the Vietnam end of war list was an exercise in retrospectivity. For this reason, several submissions were highly critical of the Vietnam end of war list.⁸ Nonetheless, the review could be considered as one based on an examination of the process, rather than on the merits.
- 8-6 The second case concerns the award of equivalent medals within the Australian honours and awards system to Lieutenant Colonel Smith and two of his officers who fought in the Battle of Long Tan, and whose original recommendations for awards had been downgraded in-country by the Commander Australian Force

⁷ Hugh Mackay, 'The marketing of brand me', *The Sydney Morning Herald*, 3 March 2012, and discussions between Mr Mackay and the Tribunal, 29 March 2012.

⁸ Oral submissions from Mr John Burrridge, MG (who actually benefitted from the end of war list review), Public Hearing Perth, 15 February 2012; Mr Anthony Staunton, Public Hearing Brisbane, 13 March 2012; and Mr Keith Payne, VC, OAM, Public Hearing Canberra, 14 March 2012.

Vietnam (COMAFV).⁹ This decision was contentious because the decision to downgrade the awards was made by a competent authority in-theatre.¹⁰ The decision of the *Review of recognition for the Battle of Long Tan* (the Abigail Review) would appear to be contrary to the terms of reference of the interdepartmental committee set up to consider the end of war list, which was required to examine awards that were recommended at the highest level in Vietnam, but were subsequently altered or struck out in Australia. The Abigail Review was guided more by a desire to rectify a case of 'clear anomaly or manifest injustice', claiming that while COMAFV legitimately recommended particular awards, 'Commanders could not know whether the battle was a singular event, or a portent of similar actions'.¹¹ Several submissions were critical of the decision to award medals to Smith and his officers.¹² Such an approach would leave open the possibility of reviewing all decisions made in-theatre. The Abigail Review was based on a judgement of merits, rather than an examination of the process.

8-7 The third case, that of Flight Lieutenant Cliff Dohle, who the old tribunal recommended should be awarded a Distinguished Service Medal (DSM), was different. The old tribunal determined that the officer's original MID should have been reconsidered and awarded in the Vietnam end of war list deliberations, but was overlooked.¹³ This was a process review. However, in its same report, the old tribunal recommended a Unit Citation for Gallantry to the subunit involved in the battle of Long Tan, and this was as a result of a merits review.

8-8 The fourth case concerns the award of the Commendation for Gallantry to Far East prisoners of war (POWs) who escaped, were caught and subsequently murdered. The old tribunal based its decision on the belief that there was a declared government policy that all POWs who had been killed when attempting to escape or were executed as a result of their escape attempt should be awarded an MID. The old tribunal determined that the soldiers involved had been overlooked when the awards were made at the end of the Second World War, and hence considered this was a process review. Nonetheless, this decision has been characterised as 'retrospectivity' in at least two submissions.¹⁴ Further, the Tribunal has since found documents concerning the policy of awarding an MID to escaped POWs that indicate that the award was discretionary, as with every other honour for gallantry or meritorious service (as previously discussed in paragraphs 4-66 to 4-77). In retrospect, the old tribunal had conducted a merits review although this was not its intention.

9 Department of the Prime Minister and Cabinet, *Review of recognition for the Battle of Long Tan: March 2008*, PM&C, Barton, ACT, 2008.

10 Major General David MacLachlan (Retd), Victorian Returned and Services League state president, in an oral submission in Melbourne on 15 December 2011, stated that the upgrading of awards in 2008 for Long Tan were not widely supported in the veterans' community.

11 *Review of recognition for the Battle of Long Tan: March 2008*, paragraph 5.1.

12 Oral submissions from Mr John Burridge, MG, Public Hearing Perth, 15 February 2012; Mr Anthony Staunton, Public Hearing Brisbane, 13 March 2012; and Mr Keith Payne, VC, OAM, Public Hearing Canberra, 14 March 2012.

13 Report, Defence Honours and Awards Tribunal, *Inquiry into Unresolved Recognition Issues for the Battle of Long Tan*, September 2009.

14 Oral submission by Mrs Lynette Silver, Public Hearing Canberra, 14 March 2012; and Submission 98A, Mrs Di Elliott

- 8-9 Despite elements of retrospectivity in these four cases, the Tribunal concluded that they did not provide a precedent for retrospective or revised awards for gallantry in the period when the Imperial system was in operation. The case of the award of the Star of Gallantry to Lieutenant Colonel Smith and the Medals for Gallantry to two of his officers illustrates, without providing any real guidance on handling issues that arise, the risk of such a revisionist approach to the integrity of the Australian honours and awards system. It opens the possibility of reviewing all the decisions made contemporaneously in-theatre by a competent authority in both the Imperial and Australian honours and awards system.

Lack of a Victoria Cross for the Royal Australian Navy

- 8-10 Some submissions, and also articles in newspapers and magazines, have proposed that because no member of the RAN has ever been awarded a VC, even though RAN gallantry has been comparable with that of the RN, one or more VCs should now be awarded to members of that service. In support of this argument it is claimed that because the Second World War Commonwealth Navy Order (CNO) 43/42 directed that the 'nature of the award is not to be suggested', and also that all RAN recommendations from the South-West Pacific Area and the Australia Station were to be submitted to the British Admiralty Honours and Awards Committee, the odds were stacked against an RAN officer or sailor receiving a VC. Some submissions went as far as to suggest that there was British bias against 'colonials'.
- 8-11 First impressions of the simple numbers of Navy awards might indicate that members of the RAN have received fewer awards for gallantry than the other services. However, this is not the case. Appendix 7 is a short paper on the breakdown of Imperial awards to Australian forces, including seven tables that show the numbers of awards for gallantry (VC, George Cross [GC], George Medal [GM], Distinguished Service Order [DSO], Distinguished Service Cross [DSC], MC etc.) divided into seven periods of conflict. The paper shows that if the DSO is excluded (although in the two world wars it was sometimes awarded to junior officers for gallantry) then, during Australia's conflicts since the Boer War, approximately 30,000 Imperial gallantry awards were made to members of the Australian Army, approximately 5,000 to members of the RAAF and 1,000 to members of the RAN. While the Army had by far the largest proportion, it should be noted that it also had the largest number of personnel in direct contact with the enemy over prolonged periods. The largest number of awards were MIDs — almost 13,000 — while the largest number of medals were Military Medals, which numbered about 11,500. The fact that the RAN received 1,000 awards for gallantry suggests that there were fewer opportunities for naval personnel to receive such awards but, nonetheless, shows that considerable numbers did receive them. Further, members of the RAN received five GCs while the Army received four and the RAAF none.
- 8-12 There are possible explanations why the RAN might have received fewer awards than the other services. Service in the Army involved direct combat with the enemy, often on an individual basis. Service in the Air Force involved combat at more of a distance; in the case of fighter aircraft, one or two aircrew might have

been involved, in the case of larger bombers, the air crew could have numbered up to 10 personnel. But when a ship was in combat, the entire crew (perhaps in the hundreds) was involved. Each man was required to work as part of a team, so there was little scope for an action that was likely to result in a recommendation for a high individual award. Notwithstanding this difference in service, the statistics show that proportional to its strength, the RAN has not always received the fewest medals. In the First World War the Australian Imperial Force received one medal for every 20 soldiers, while the RAN received one for every 100 sailors. In the Second World War the Army received one medal for every 100 soldiers, while the RAN and the RAAF each received one for every 50 personnel. In the Korean War the RAAF received one medal for every 10 airmen; the Army received one for every 50 soldiers, and the RAN one for every 100 sailors. In the Vietnam War the Army received one medal for every 100 soldiers, the RAN one for every 50 sailors and the RAAF one for every 20 airmen.¹⁵ While these statistics can be interpreted in various ways, they do not indicate any bias against granting awards to Navy personnel.

8-13 Although CNO43/42 stated that, when commanding officers were making recommendations, the 'nature of the award is not to be suggested', a commanding officer could influence the final level of award merely by how he wrote the nomination. If he intended that an action be recognised with a VC, the nomination he submitted needed to be convincing and supportable and refer to outstanding valour. In that case, there was nothing preventing the Admiralty's Honours and Awards Committee from recommending a VC to the King. Nonetheless, as explained in paragraph 4-63, the system mandated by CNO43/42 made it more difficult for a commanding officer to ensure their personnel received what they considered to be the appropriate honour or award. A case can be made that the Australian Commonwealth Naval Board (ACNB) failed to make the procedures for recommending honours widely known in the RAN and that many ships' captains had little or no experience of making recommendations for honours.¹⁶

8-14 Further, as far as the Tribunal can determine, the ACNB invariably made no attempt to seek further information from the relevant commanding officer or the intermediate commander about their recommendations. In forwarding the recommendations to the Admiralty without any comment or recommendation of its own, the ACNB appeared to act as little more than a 'postbox'. In that sense, while acting according to its procedures, the ACNB took no positive action to ensure that members of the RAN received the most appropriate honour. Notwithstanding the ACNB's shortcomings, however, using the extant RAN system many RAN personnel serving in the South-West Pacific Area and on the Australia Station were awarded DSOs and DSCs.

¹⁵ For detailed statistics see Appendix 7.

¹⁶ Many ships' captains were Royal Australian Naval Volunteer Reserve officers who had never previously served with the RN, and were, therefore, unaware of RN procedures. In June 1942, the Australian Commonwealth Naval Board consisted of: Norman Makin (Minister for the Navy); Vice Admiral Sir Guy Royle, RN, (First Naval Member); Commodore GD Moore, RAN, (Second Naval Member), Engineer Rear Admiral PE McNeill, RAN, (Third Naval Member); Mr AR Nankervis (Secretary Department of the Navy and Secretary of the Board); GL Macandie (Finance and Civil Member); and Mr RH Nesbitt, (Business Member).

- 8-15 In the case of the First World War, from a total of 437,000 men serving in the RN¹⁷, only 1 in 10,000 were awarded a VC. If we only consider awards for action at sea, then this figure drops to 1 in 20,000. By 1918, at home and abroad, the RAN had less than 5,300 men serving.¹⁸
- 8-16 The fact that no member of the RAN has been awarded a VC needs to be considered in the context of the statistics of VCs awarded to members of the RN. The RN (including the Royal Naval Air Service and Fleet Air Arm) has received 108 Imperial VCs since its inception in 1856. This equates to approximately 8 per cent of the total awarded. The awards are broken down into theatre and location in Table 8-1.¹⁹

Table 8-1 Victoria Cross Awards made to the Royal Navy

Theatre/war	Awards for actions at sea	Awards for actions on land	Awards for actions in the air ^a	Total
Crimea	3	21	–	24
Indian Mutiny	–	6	–	6
Territorial wars	4 (1)	6	–	10
First World War				
1914	2	–	–	2
1915	3	8	2	13
1916	3	2	–	5
1917	10	–	–	10
1918	5 (2)	8	–	13
Total First World War	23 (2)	18	2	43
Between the wars	3	–	–	3
Second World War				
1939	–	–	–	–
1940	4 (3)	1	–	5
1941	2	–	–	2
1942	9 (5)	–	1	10
1943	3 (2)	–	–	3
1944	–	–	–	–
1945	2 (2)	–	–	2
Total Second World War	20 (12)	1	1	22
Post-Second World War	–	–	–	–
Total	53 (15)	52	3	108

a Excluding Lt R Gray VC, Royal Canadian Naval Volunteer Reserve, who flew with the Royal Navy but was a Canadian

17 JR Hill (ed), *The Oxford illustrated history of the Royal Navy*, Oxford University Press, Oxford, UK, 1995, p. 319.

18 Arthur W Jose, *The Royal Australian Navy 1914–1918, the official history of Australia in the War of 1914–1918* Angus & Robertson, Sydney, 1938, p. 472.

19 Figures based on David Harvey, *Monuments to courage: Victoria Cross headstones and memorials*, The Naval & Military Press, Uckfield, UK, 2008. Table excludes the 10 Royal Marine VCs. The figures are agreed by the RAN Sea Power Centre – Australia and the RN Historical Branch, London.

The figures in brackets for awards for actions at sea are awards made for actions close inshore, in harbours or on estuarine and riverine operations. Including these actions, only about half of the RN's VCs have been for actions at sea. If the Tribunal were to recommend VCs for the 8 RAN personnel who were involved in actions at sea, this would constitute a 15 per cent increase in the number of VCs awarded for actions at sea. That is, the awarding of VCs to the individuals under consideration would significantly change the statistical record of naval VCs during the past 150 years.

- 8-17 Although some submissions claimed that there was British bias against Australian 'colonials', none of the submissions or any detailed research provided any evidence of such bias. On the contrary, when Australian ships were operating in the Mediterranean Theatre in 1940–1941 under British command, the British Commander-in-Chief arranged rapid awards for Australian officers such as a Companion of The Most Honourable Order of the Bath (CB) for Captain Collins, and a DSO and bar for Captain Waller, in recognition of their outstanding performances.

The Mention in Despatches 'posthumous gap'

- 8-18 As noted earlier, for an action in the presence of the enemy, under the Imperial system only two posthumous awards could be made: the VC and the MID. If it was considered that the action did not warrant a posthumous VC, the only alternative was the award of a posthumous MID — this has been termed by some the 'posthumous gap'. A good example occurred after a raid on Rabaul in November 1943 by three RAAF aircraft. The anti-aircraft fire was so heavy that two of the RAAF aircraft were repelled. A third aircraft, piloted by Squadron Leader Owen Price, pressed home the attack; it dropped a torpedo that damaged an enemy vessel, but Price was then shot down and killed. Price was awarded an MID (Posthumous) and the other two pilots received Distinguished Flying Crosses. The shortcomings of the Imperial system in this regard were recognised at the time (see paragraphs 4-28 to 4-29) but a considered decision was made not to change the system.
- 8-19 By contrast, under the Australian system, posthumous awards can be made for all honours between the VC for Australia and a Commendation for Gallantry (equivalent to an MID). For example, Sergeant Brett Wood, MG, who was killed in action in Afghanistan in May 2011, was posthumously awarded the DSM in January 2012. If this had occurred under the Imperial honours system, he would have been awarded an MID (Posthumous) or nothing at all.²⁰
- 8-20 On the basis of its work on this Inquiry, the Tribunal did not believe it is reasonable or, in most cases, possible for it to attempt through a merits review to reconsider the cases of Australian personnel who were awarded a posthumous MID, and now to decide, had they lived, whether they would have been awarded anything other than an MID. Some might have been awarded a higher decoration, but if so, what decoration? Therefore, while acknowledging the 'posthumous gap', the Tribunal considered that there was insufficient evidence to attempt to fill the gap

²⁰ Sergeant Wood had been awarded the MG in 2006.

retrospectively. To attempt such a review even if requested would introduce an anomalous precedent that would create an injustice for every other Imperial level four posthumous honour recipient. Such a process would also raise considerable risks to the standing of the Australian honours and awards system.

Comparable actions providing a precedent

- 8-21 A number of submissions claimed that comparable actions by other individuals that resulted in the award of the VC were clear precedents for the VC to be awarded to particular individuals in the Terms of Reference. These were as follows:
- Lieutenant Commander Stoker was awarded a DSO for his submarine action in the Sea of Marmara in 1915, while other submarine captains, Lieutenant Commanders Boyle, Dunbar-Nasmith and Holbrook, received the VC.
 - Leading Cook Emms was awarded an MID (Posthumous) for remaining at his gun, while others who did the same in the RN, such as Leading Seaman Mantle, received a posthumous VC.
 - Lieutenant Commander Rankin, captain of HMAS *Yarra*, received no award for attempting to protect vulnerable transport ships in March 1942, while Commander Fegen of HMS *Jervis Bay* did the same in November 1940 and received the posthumous VC.
- 8-22 The argument for treating as a precedent a seemingly comparable action misunderstands the process of recommending and approving honours. The Imperial and Australian systems are not based on precedent. Undoubtedly, commanders, through their training and experience, develop an understanding of what sort of action might warrant a particular decoration. But they know that no two situations are the same, and they are guided primarily by the action that took place and the context in which it took place. Members of the Admiralty Honours and Awards Committee would have been aware of other actions for which a particular decoration was awarded, and such information would have informed their judgements; but previous actions were not a binding precedent and nor did the multi-tiered command recommendation process in practice ever provide for consideration of precedence.
- 8-23 Further, no two cases are exactly the same. Stoker lost his submarine; the other captains mentioned above did not. Mantle manned a gun on a ship that was the specific target of a deliberate attack, while Emms manned a gun on a vessel that was one among many others targeted. Rankin was unsuccessful in protecting the convoy he was escorting; most of the convoy Fegen was escorting escaped.²¹
- 8-24 A reverse case could also be made. For example, on 28 March 1942, Able Seaman Arthur Cole on board the troop ship TSS *Canberra* manned a Vickers machine gun and fought off an attack by seven Japanese Zero Fighters 'with such courage, skill and determination' that the Japanese eventually abandoned their attack.²² Like

21 For the Admiralty's correspondence concerning Fegen's action see TNA: ADM 1/10496.

22 Letter, D McRae, Master of TSS *Canberra*, to Commodore-in-Charge Garden Island, 27 March 1942, and other correspondence in TNA: ADM1/12265.

Emms, he was awarded an MID; if Emms were to be upgraded, on the basis of precedent Cole too would have a case.

- 8-25 Those seeking to use precedent have tried to find a convenient or other similar comparison of someone who was awarded a VC, overlooking many other similar cases for which lesser awards or no awards were made. In fact, recommendations for a VC are always considered on a case-by-case basis. Commanders' recommendations are based on the information available to them at the time. Therefore, the Tribunal concluded that there was considerable danger in trying to determine whether the individuals under review should be awarded a VC simply on the basis of an alleged precedent of a similar action elsewhere.

The value of the Victoria Cross

- 8-26 Several submissions suggested that if the Tribunal were to recommend the awarding of additional VCs for Australia, such an action would reduce the value of existing VCs. The Tribunal was advised, however, that an honour such as the VC has both a significant intrinsic value based on tradition and community attitudes, and a monetary value depending on market appraisal.
- 8-27 The Tribunal heard from expert witnesses that at present the VC for Australia is seen as equivalent to the Imperial VC in status and rarity, and is recognition for acts of the most conspicuous gallantry, acts of valour or self-sacrifice, or displays of extreme devotion to duty, in the presence of the enemy.²³ The Tribunal was warned that such would not remain the case if the VC for Australia was either awarded too frequently or awarded retrospectively to right some perceived injustice. The VC for Australia would then be considered a 'second best' award — that is, lower in standing than an Imperial VC.
- 8-28 With regards to monetary value, Mr John Burrridge, a medal valuer and collector, told the Tribunal, *inter alia*, that the commercial value of the VC depends on who the recipient was, whether the recipient's medal set was complete (i.e. unbroken with no medals missing) and the set's desirability in the marketplace. He recalled the selling price of a broken set VC (i.e. with the original Victory Medal worth about A\$15 missing) as only \$50,000 because of this. One submitter, Mr Graham Wilson, a long-time medal collector, stated that a retrospectively awarded VC would be seen by the medal-collecting community as worthless. Mr Michael Downey of Spinks Auctioneers (Australia) advised that a key factor in any auction sale of an award is the amount of original documentation that comes with the decoration, and whether the recipient's campaign medals were for sale with the decoration.

This would be a major concern, in the eyes of a collector, to the value of a posthumous VCA [Victoria Cross for Australia] issued some seventy to one hundred years after the act of gallantry took place, especially where it has been proved that the proposed recipient was never officially recommended by his superior commander for a decoration and the relevant campaign medals were not with the VCA.²⁴

23 Oral submissions by Mr Graham Wilson, Public Hearing Canberra, 1 December 2011, and by Mr John Burrridge, Public Hearing Perth, 14 February 2012.

24 Letter, Michael Downey to Chair, Defence Honours and Awards Appeals Tribunal, received 3 February 2012.

- 8-29 In the past five years, full (unbroken) sets of Imperial VCs awarded to Australians have raised record prices at auction. Examples are given in Table 8-2.

Table 8-2 Recent Imperial Victoria Cross sales in Australia

Name	Date of sale	Selling price (A\$)	Location now held
Private Ted Kenna	28 July 2011	1,002,000	Held privately
Staff Sergeant George Howell	8 April 2011	590,000	AWM
Sergeant Henry Dalziel	25 November 2010	525,000	AWM
Captain George Ingram	28 May 2008	468,000	AWM
Major Peter Badcoe	20 May 2008	488,000	Museum of South Australia
Corporal Bernard Gordon	29 November 2006	478,000	AWM
Captain Alfred Shout	24 July 2006	1,200,000	AWM

AWM = Australian War Memorial

Sources: Iain Stewart, 'Sales of the Victoria Cross', viewed 7 October 2012, www.victoriacross.org.uk/aaauctio.htm, and The Victoria Cross Society, www.victoriacrosssociety.com/auctions.htm, viewed 24 February 2012.

- 8-30 The Tribunal was not persuaded that an alteration to the monetary value of the VC should be a relevant factor in deciding whether a VC for Australia should be awarded retrospectively. But the Tribunal noted a possible danger of the VC for Australia losing its equivalent standing with the Imperial VC should many awards be made retrospectively.

Maintaining the integrity of the Australian honours and awards system

- 8-31 A large number of submissions argued that to award VCs or other gallantry honours retrospectively would undermine the integrity of the Australian honours and awards system. These submissions came from former governors-general, former prime ministers, senior officials of the Department of Defence, former Defence chiefs, leading historians, medal experts, the Returned & Services League and private citizens. The Secretary of the Victoria Cross & George Cross Association (in London), representing the views of living recipients (including Australian recipients) stated that 'to make an award of the Victoria Cross of Australia (sic) to someone who performed an action which was not recognised by the award of the Victoria Cross at the time' was 'risking lowering the status of the VC for Australia below that of the Victoria Cross. This would be a great pity — to put it very mildly'.²⁵ Mr Keith Payne, VC, OAM, emphasised that he did not speak for the Victoria Cross & George Cross Association, but asserted that the awarding of the VC for Australia retrospectively would 'cheapen' the Australian honours and awards system.²⁶
- 8-32 Mr Les Carlyon, author of two highly regarded histories of Australia in the First World War, a recipient of the Prime Minister's Prize for Australian History, and a

²⁵ Submission 18, Mrs Didy Grahame, OBE, MVO, Secretary, the Victoria Cross & George Cross Association.

²⁶ Oral submission by Mr Keith Payne, VC, OAM, Canberra, 14 March 2012.

recent member of the Council of the Australian War Memorial, put the case for preserving the integrity of the Australian honours and awards system most clearly.

The processes by which Victoria Crosses have been awarded to Australians have stood up exceptionally well. It doesn't follow from this that everyone who should have received a Victoria Cross did receive one. It does follow, however, that part of the integrity that attaches to the award stems from the fact that the recipients have all been recommended by much the same processes ...

What is now being proposed by some is a break with these patterns and traditions. If Australia were to grant VCs as the result of a government acting on recommendations to this inquiry, we would have introduced a two-tiered system. There would be the VCs awarded the conventional way, as a result of military processes, eye witness accounts and prompt decisions. And there would be those awarded by political process, and in response to well-intentioned lobbying. In other words there would be a VC and a VC with an asterisk ...

Would the latter-day awards carry the same weight as VC awarded the conventional way and close to the event?²⁷

- 8-33 The former Prime Minister, The Hon. John Howard, stated that to award honours for past deeds is an 'inherently hazardous exercise'.²⁸ Emeritus Professor Peter Dennis of the Australian Defence Force Academy said that retrospectivity 'would invite far more abuses than it would redress'.²⁹ Retired Brigadier Chris Roberts, also a respected military historian, was adamant that retrospective awards would have 'the potential to cheapen the VC' and would 'have the potential to bring a degree of ridicule on the retrospective awards'.³⁰ Major General Paul Stevens (Retd), a former services member of the Repatriation Commission, Director of the Office of Australian War Graves, and member of the Council of the Australian War Memorial, wrote:

In any conflict there are those whose bravery and valour might be conspicuous who are unrewarded. The system is not perfect because it is based on the judgement of individuals at the time. To my mind, a process that allowed retrospective awards based on the views of those not involved in the conflict would be even more flawed. It would lead to cherry-picking of candidates by vocal champions whose views were informed by a different era, and constant calls for consideration by decision makers no better placed to judge retrospective merit than those originally involved. Awards made in these circumstances would progressively serve to weaken the recognition originally intended, not to mention place Australia at odds with its Commonwealth partners who, until recently, shared the use of these awards.³¹

- 8-34 The integrity of the Australian honours and awards system rests in large measure on the perception that there is equivalent standing with the Imperial system (i.e. that the VC for Australia is equivalent to the VC under the Imperial system). To award the VC for Australia retrospectively, while it is not possible to do so with the Imperial VC, would lower the standing of the VC for Australia. Several submissions argued that Australia is an independent country and ought to ignore comparisons

27 Response from Mr Les Carlyon, 16 January 2012.

28 Response from The Hon. John Howard, OM, AC, 29 February 2012.

29 Response from Emeritus Professor Peter Dennis, 28 February 2012.

30 Response from Brigadier Chris Roberts, AM, CSC, (Retd), 28 February 2012.

31 Response from Major General J. Paul Stevens AO, 8 March 2012.

with the Imperial system, and that if Australia wished to have a VC for Australia with a lower standing it should go ahead and do so.³² But it would then need to be recognised that the value of the Australian honours and awards system would have been lowered. General Peter Gration, a former Chief of the Defence Force, and Chairman of the 1994 Committee of Inquiry into Defence and Defence Related Awards, wrote:

I believe our present system of Honours and Awards is generally well respected in the Australian community, and its outcomes accepted as correct and legitimate. If we now come forward with numbers of retrospective awards, this must create doubt on the judgement of those who administered the system in the past, and hence doubts on the system itself ... The great honour of winning a VC could only be lessened by the overturning of past decisions and the awards of numbers of new VCs for actions in the distant past.³³

- 8-35 Almost all submissions, including some of those who were advocating a VC for Australia for an individual, accepted that to award retrospective VCs could open the floodgates to further claims for retrospective awards, resulting in a never-ending series of reviews by the Tribunal. Many submissions used the term 'opening Pandora's box' in referring to the possible outcome of awarding VCs for Australia retrospectively.
- 8-36 The submissions that supported retrospective awards claimed that to do so would strengthen the integrity of the honours and awards system by demonstrating that it was flexible enough to rectify injustices and to recognise obvious acts of conspicuous valour. As one submission stated, 'the integrity of the system relies on what the individual actually did'.³⁴ Many of the submissions that put forward this view were those concerning specific individuals. They maintained a narrow focus on the claim of the individual and were generally made without considering the wider implications for the Australian honours and awards system.
- 8-37 The claim that retrospective awards would strengthen the Australian honours and awards system needs to be considered in the light of changing community attitudes discussed in paragraphs 3-12 to 3-20. That is, because there is a greater desire on the part of many Australians for recognition and in particular for military honours, the Australian honours and awards system should be able to accommodate this desire. In the light of the strong case put by the organisations and individuals mentioned in paragraph 8-31, the Tribunal did not support this argument.
- 8-38 Taking all these considerations into account, the Tribunal concluded that to maintain the integrity of the Australian honours and awards system, if it were to recommend a retrospective honour, the new evidence should be assessed by reference to the standards and regulations of the time. Further, retrospective or revised gallantry honours should only be awarded when the actions of potential recipients meet all the stringent eligibility requirements of the time.

32 This argument was put, in various forms, in submissions from former Senator Guy Barnett, Ms Jill Hall, MP, Brigadier Andrew Nikolic (Retd), Mr Robert Rankin, former Senator Chris Schacht and Mr Sid Sidebottom, MP.

33 Response from General PC Gration, AC, OBE (Retd), 18 January 2012.

34 Oral submission by Brigadier Andrew Nikolic (Retd), Public Hearing Launceston, 16 December 2011.

Evidence

- 8-39 One of the biggest problems in recommending an award retrospectively is finding acceptable evidence. The most reliable evidence is that taken from witnesses soon after the event, and that is the evidence used when commanders recommend a decoration. The strongest submissions supporting the case for the individuals were based on the claim that the original recommendations did not take into account evidence that has now allegedly come to light. The details are listed in the relevant chapters dealing with the individual claims. However, in general terms, there is great difficulty in accepting evidence from individuals more than 60 years after the event. Memories fade and recollections are influenced by information from other sources. At least one submitter conceded that his recollection might not be an accurate description of the events that took place. Such evidence needs to be weighed against decisions made by competent authorities at a time much closer to the event.
- 8-40 The Tribunal examined all the cases to determine whether documentary evidence existed to show that recommendations were made but then lost, or for unjustifiable reasons were not progressed or acted upon, or that other maladministration of the recommendations was evident. The Tribunal could find no evidence to support any of these claims. (However, as discussed in Part 2 of this Report, the Tribunal concluded that the ACNB failed to ensure that the officers and men of HMAS *Yarra* were adequately recognised for the ship's actions in February and March 1942.)

Equity

- 8-41 If the Tribunal were to reconsider and upgrade those individuals who had been recommended for a decoration and had subsequently received a decoration other than a VC, a strong case could be made that the other individuals, who had been recommended for a VC and had had the recommendation downgraded, should also be reviewed. On the same basis, a case could then be made that those individuals who had been awarded a VC should be reviewed to determine whether the awards should now be downgraded. This would become an administrative and, for some, an emotional nightmare with no guarantee that the final outcome would be any fairer than the original one. Dr Michael McKernan, a former Deputy Director of the Australian War Memorial and the project director for the Entombment of the Unknown Australian Soldier, thought that it was an 'appalling scandal' that Teddy Sheean's bravery was not honoured by the country at the time, but he could not see 'any justification for rectifying that awful error, unless all other errors are also rectified. And that is beyond the capacity of any Tribunal or any other body'.³⁵

³⁵ Response from Dr Michael McKernan. The Tribunal asked Dr McKernan to clarify 'appalling scandal'. He replied that Sheean's action had been seen by witnesses and it was an 'error' not to recommend him for a higher award, but he remained adamant that errors made in the 'fog of war' should not be remedied so long after the events took place, 'unless every error and mischance can somehow be remedied'.

8-42 Professor Bill Gammage, an eminent historian at the Australian National University, put the equity case succinctly:

The award of the VC has always been imperfect. The requirement to have officers or more than one independent witness make chance a factor, as does reliance on written recommendations. There are 'CO's VCs', 'Rum VCs' and 'Aspro VCs', while a brief scan of 1918 VCs, for example, shows it as a good year for VCs especially in the Guards Divisions, and that the various colony VCs were averaged out in that year to be more nearly proportional.³⁶

The above consideration informed the Tribunal that it could be unwise to attempt to make retrospective awards.

Dealing with claims for retrospective awards

8-43 The Tribunal took particular note of the submission from the Department of the Prime Minister and Cabinet (PM&C), which stated:

The Imperial and Australian honours systems both operate on the basis that considering recommendations as close as possible to the time of the acts of gallantry and valour is best.

- a. We consider that if a recommendation was assessed at the time of the act of gallantry or valour and rejected, no cause exists to amend that original decision, subject to the emergence of evidence or lack of due process in the original decision-making process, or to the emergence of new evidence in relation to the act of gallantry or valour.
- b. If no recommendation was made at the time of the act of gallantry or valour and evidence has become available to support such a recommendation, we consider assessing that evidence by reference to the standards of the time is necessary.
- c. Any recommendations for new awards should address anomalies and injustices without creating new ones.
- d. Any recommendations for new awards should be for Australian awards (the Australian Government ceased recommending Australians for Imperial awards in 1992).
- e. Only one medal within the Australian system of honours and awards should be awarded in recognition of a particular action.³⁷

Process review

8-44 In considering how to deal with claims for retrospective awards, the Tribunal took into account the different requirements of a merits review and a process review (see paragraphs 1-36 to 1-38). The PM&C submission referred to the 'lack of due process in the original decision-making process'. The Tribunal saw that it would be required to conduct a process review (i.e. determine whether due process [the specified rules at the time] had been followed). There would be no case for a retrospective award or a revised award unless there was a clear case of

³⁶ Response from Professor Bill Gammage, 2 May 2012.

³⁷ Submission 136D, Mr Peter Rush.

maladministration during or after a recommendation had progressed through the chain of command, or if the recommendation had been missed in an end of war list or similar.

8-45

The Department of Defence presented the view that ‘broadly speaking, maladministration may be viewed as a failure to follow established policy that may lead to disadvantage’.³⁸ The Commonwealth Ombudsman does not use the term maladministration in its investigation of complaints, but uses the term ‘administrative deficiency’.³⁹ The *Independent Commission Against Corruption Act 1988* (NSW) states that conduct is deemed to be maladministration if it involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive, improperly discriminatory, or based wholly or partly on improper motives.⁴⁰ The New South Wales Ombudsman provides some examples of this conduct, which include:

- breaches of natural justice or procedural fairness;
- unfair decisions or actions that do not take into account all relevant considerations, are not justified by any evidence or are unreasonable;
- decisions or actions based on information that is factually in error or misinterpreted;
- delays in making a decision or taking action;
- failures to investigate properly;
- conflicts of interests;
- bad faith or dishonesty;
- policies applied inflexibly without regard to the merits of each case; or
- important facts omitted from reports or deliberations, or ignored.⁴¹

Taking into account these views, the Tribunal considered that maladministration could occur not only if a commander failed to follow the required procedure, but also if a commander made a decision that could not be justified by the available evidence, if a commander did not show due diligence, or if a commander failed to make a decision when the evidence suggested that they should have made a decision. If due process was not followed or there was a case of maladministration, the Tribunal would need to determine what action should be taken, based on the original recommendation. The Tribunal noted that if it were to recommend an award it would need to do so within the regulations applying at the time (unlike a merits review, which could take into account new laws — see paragraph 1-35). For example, if the action under review took place when the Imperial honours and awards system applied, then the only posthumous honours that could be recommended for an action in the presence of the enemy would be the VC or the MID.

38 Attachment to letter, General DJ Hurley, CDF, to Chair, Defence Honours and Awards Appeals Tribunal, 20 September 2012.

39 Letter, Margaret Chinnery, Director, Defence Team, Commonwealth Ombudsman’s office, to Chair, Defence Honours and Awards Appeals Tribunal, 26 September 2012. The actions that might be considered administrative deficiency are set out in: Commonwealth Ombudsman, *Fact sheet 2: Administrative deficiency*, Commonwealth Ombudsman’s office, Canberra, 2009.

40 *Independent Commission Against Corruption Act 1988* No. 35 (NSW) s. 57B(4).

41 New South Wales Ombudsman, *Fact sheet 13*, New South Wales Ombudsman, Sydney, November 2010, Reprinted March 2012.

Merits review

- 8-46 The PM&C submission also referred to the ‘emergence of new evidence’. The Tribunal considered that it could only undertake a merits review after it had undertaken a process review. In conducting a merits review, the Tribunal considered that it was being asked to place itself in the shoes of the original decision-makers (if there was one), in three possible situations:
- If the original decision-makers made a decision to award an honour, or made a conscious decision not to make an award, the Tribunal was being asked to overturn that decision. To do so, the Tribunal would need to consider the evidence. If the evidence was exactly the same as that available to the original decision-maker, and if the Tribunal wished to recommend a revised award, it would need to overturn the original decision. The Tribunal had already decided that it would be unwise and very difficult, with hindsight, to overthrow a judgement made by a competent authority that had much greater understanding of the events than the Tribunal could have up to a century later.
 - If the Tribunal received more evidence than was available to the original decision-makers then the Tribunal would need to consider the precision, accuracy and truth of that evidence. The evidence would need to be compelling and reliable; in the case of the VC, this would include witness statements.
 - If no decoration was recommended, and the Tribunal could be sure that there was no conscious decision not to make an award, then the Tribunal would be in the situation of an original decision-maker or recommender. In that case, the Tribunal would need to have before it the sort of evidence that would justify recommending an award. In the case of a VC, this would include witness statements or equivalent contemporary accounts of the action.
- 8-47 Therefore, the whole matter of a merits review revolves around evidence. The Tribunal saw that its task was to determine firstly whether that evidence was valid (i.e. whether it was as strong and legitimate as evidence provided at the time). The Tribunal would need to take into account when this new evidence came to light and would need to be aware that statements made by witnesses many decades after an event are likely to be less accurate than those made immediately after an event. Any allegedly new evidence would also need to be tested against known factual information. If the Tribunal was persuaded that this new evidence was valid, it then needed to consider whether the evidence warranted a new or revised award, judged against the criteria applying at the time.

Guidelines for conducting the reviews

- 8-48 From this discussion, the Tribunal concluded that to be able to deal effectively with the risk identified, and balance the various interests in particular situations, it should determine a set of guidelines that it would apply in this Inquiry and in any later reviews. The Tribunal developed the following guidelines:
- The first step is to undertake a process review to determine whether due process had been followed. This includes an attempt to determine whether there is a case of maladministration and whether new evidence has come to

light. If due process has been followed, there is no maladministration, and no new evidence, then the original decision remains unchanged.

- If there is a case of maladministration, or if compelling new evidence has appeared that was not available at the time of the original decision, the Tribunal's next step is to undertake a merits review. In the Tribunal's view, however, finding maladministration or compelling new evidence does not of itself justify recommending an Australian honour to recognise the service or actions not adequately considered at the time. In conducting the merits review, the Tribunal should take into account further factors such as:
 - It is no longer possible to award retrospective honours in the Imperial honours and awards system (see paragraphs 6-23 and 7-9).
 - It is possible to make retrospective and revised awards in the Australian honours and awards system, but this should only be contemplated in the most compelling of cases (see paragraphs 6-24 and 7-10).
 - New evidence should be assessed by reference to the standards and regulations of the time (i.e. the Tribunal would need to take into account the nature of the honour that was likely to have been awarded at the time) (see paragraphs 8-3, 8-20 and 8-38).
 - Similar cases should not be used as a precedent or for comparison; while two cases might appear to be alike, no two cases are exactly the same (see paragraph 8-25).
- Any new recommendations for new awards should address anomalies and injustices without creating new ones.
- Consideration must be taken of the negative impact of retrospective recognition on the standing of those Imperial honours already awarded to Australians.
- Retrospective or revised gallantry honours should only be awarded when the actions of potential recipients meet all the stringent eligibility requirements of the time. While the Letters Patent for the VC for Australia do not require three witness statements, the Tribunal would need to be satisfied that there was sufficient compelling evidence to warrant recommending a VC for Australia.
- The Tribunal should apply the rules as they were at the time. Under the Imperial system only the VC and the MID could be awarded posthumously for actions in the presence of the enemy. In considering possible retrospective posthumous honours for an action in the period when the Imperial system applied, the Tribunal should only recommend the equivalent honours in the Australian system, namely the VC for Australia and the Commendation for Gallantry.

Impact on the Australian honours system

8-49 Finally, beyond these considerations, under its Terms of Reference the Tribunal was required to consider what impact a new or revised award would have on the Australian honours and awards system. In paragraphs 8-38 to 8-39 it was argued that it is extremely difficult to find and rely on new evidence that equals the quality of the evidence taken at the time, unless it is compelling. It was argued that

the awarding of new or revised honours based on this evidence would weaken the integrity of the Australian honours and awards system. In other words, it was extremely undesirable to attempt a merits review of events that took place more than half a century (and in some cases up to a century) ago. The Tribunal further concluded that there were considerable practical difficulties in making retrospective awards even if there was a desire to do so. The Tribunal therefore concluded that retrospectivity is generally not desirable for the following reasons:

- If Australia were to confer widespread retrospective honours and awards it would destroy the concept that Imperial and Australian honours and awards were equivalent. In particular, it would call into question the notion that the Imperial and Australian VCs were equivalent.
- Unless done to address a clear injustice, it would damage the integrity of the Australian honours and awards system. In these rare cases, however, the ability to correct the past injustice by an Australian award would add to the standing of the Australian system.
- If the individuals under review were to receive the VC, then every other gallantry nomination would potentially need to be reviewed. Many servicemen have been recommended for the VC but have had the recommendation overturned by a higher authority. There would be a never-ending search for allegedly worthy recipients with a consequent damage to the Australian honours and awards system.
- No system is perfect. For every VC recipient there are many others who could have received the honour. There is nothing unique in a potentially worthy recipient not receiving an honour; honours are discretionary and, as such, will not cover every possible recipient in all circumstances.
- Today's standards cannot be applied to events and actions that took place in a completely different era.
- An award was considered by the relevant competent authorities of the day who were intimate with the circumstances, and current-day decision-makers lack the necessary competency to rewrite the judgements made by those authorities.
- Through the passage of time it is no longer possible to be sure, without indisputable evidence, exactly what happened in the action in which the individual was involved.
- The rules and procedures by which honours were and are determined are quite specific (i.e. in the case of the VC, where possible, three signed witness statements are required and these, along with a recommendation by the commanding officer, need to be forwarded through the chain of command). If there is any doubt, no action should be taken.

Meritorious Unit Citations and other unit awards

- 8-50 The Tribunal received submissions that the RAN Helicopter Flight Vietnam should receive a Meritorious Unit Citation as part of submissions concerning Leading Aircrewman Shipp. While consideration of a submission specifically about a Meritorious Unit Citation was not in the Terms of Reference for this Inquiry, the

Tribunal noted that there was a connection between seeking to provide recognition of certain individuals, and recognising the gallantry of the larger group. (See the old tribunal's report, *Inquiry into Unresolved Recognition Issues for the Battle of Long Tan*, discussed in paragraph 6-20). The Tribunal observed, however, that granting a Meritorious Unit Citation many years after the event carries with it the same risks to the integrity of the service's system of recognising units as granting retrospective honours to an individual poses to the integrity of the Australian honours and awards system.

Other forms of recognition

- 8-51 The Tribunal heard evidence that if VCs or other awards were not to be granted retrospectively there might be other means of recognising the gallantry of the individuals concerned. Some examples put forward are covered in the following paragraphs.

Names of ships

- 8-52 Rankin, Sheean and Waller have submarines named after them. This is a very significant honour, especially as HMAS *Sheean* is the first RAN vessel to be named after a sailor. The same honour could be granted to other RAN personnel on the list. Further, the RAN should ensure that the ships' names are perpetuated after the present named ships are decommissioned.

Names of barracks and bases

- 8-53 The Army and the RAAF have named barracks or air bases after famous or noteworthy members. Many of the Army's soldiers' clubs have already been named after soldiers who were awarded the VC or GC.

Highways, streets, parks and suburbs

- 8-54 The Tribunal noted that highways, streets, parks, suburbs and infrastructure have been named after gallant Australians, including those who have not been formally recognised by a decoration. The Tribunal considered that this practice should continue.

VC for the Unknown Australian Soldier

- 8-55 One submission, supported subsequently by 12 other submissions, argued that the VC for Australia should be awarded to the Unknown Australian Soldier at the Australian War Memorial. Five submissions were against such a proposal. The proponents argued that there were countless deserving persons who had been overlooked and unrecognised for 'their heroic deed in combat' and that a VC for the Unknown Australian Soldier would 'recognise all those servicemen and women, who served and died for this country'. The submission pointed out that in 1921 Britain had awarded the VC to the United States' Unknown Soldier, and

that the United States had awarded the Congressional Medal of Honor to Britain's Unknown Warrior as well as to their Unknown Soldier.⁴²

8-56 Following that submission, the Tribunal sought the views from persons who appeared before it at public hearings. The proposal was not widely supported, and was actively opposed by the Returned & Services League of Australia, former Prime Minister John Howard, leading historians, medal experts, former Defence chiefs and many others. As Les Carlyon put it, the true significance of the Unknown Soldier and part of 'his symbolism has to do with his presumed ordinariness, that he represents every man or woman who died while serving this country in war. He does not need to be awarded a VC, which would at once change his status and could only cause some to question the integrity of the honours system'.⁴³ General Gration wrote:

I would oppose in the strongest terms the award of the VC to the Unknown Soldier. It would be quite contrary to the charter of the VC, which is an individual award for valour by a known person. It would be wrong and unnecessary to 'award' it to the Unknown Soldier, who almost certainly has not earned it. A response would probably be that the award was not meant for that particular soldier, but rather as some sort of tribute to all those who served in the Great War. If so this would be straying far from the charter of the VC. I believe we should resist this, preserving the VC as our highest award for bravery and only for that, and not letting it be diverted for other purposes however worthy in themselves.⁴⁴

8-57 In its research, the Tribunal was struck by the words of the then Prime Minister Paul Keating in his oration, delivered at the entombment on Remembrance Day in 1993. The opening words are:

We do not know this Australian's name and we never will.

We do not know his rank or his battalion. We do not know where he was born, nor precisely how and when he died. We do not know where in Australia he had made his home or when he left it for the battlefields of Europe. We do not know his age or his circumstances — whether he was from the city or the bush; what occupation he left to become a soldier; what religion, if he had a religion; if he was married or single. We do not know who loved him or whom he loved. If he had children we do not know who they are. His family is lost to us as he was lost to them. We will never know who this Australian was.

He is all of them. And he is one of us.⁴⁵

8-58 The Tribunal noted that Prime Minister Keating took pains to recognise the Unknown Soldier's ordinariness, and that he should not stand above the other 102,735 Australians on the Roll of Honour.⁴⁶ Several submitters also pointed out that none of the names on the Roll of Honour have ranks or honours and awards listed beside their name, and to award the Unknown Soldier a VC for Australia, however noble, would dishonour the others.

42 Oral submission by Mr Christopher Jobson, Public Hearing Canberra, 1 December 2011.

43 Response from Mr Les Carlyon, 16 January 2012.

44 Response from General PC Gration, AC, OBE (Retd), 16 January 2012.

45 Paul Keating, MP, Prime Minister of Australia, 'Remembrance Day Speech', Australian War Memorial, www.awm.gov.au/commemoration/keating.asp, viewed 26 May 2012.

46 Australian War Memorial, 'Deaths as a result of service with Australian units', Australian War Memorial www.awm.gov.au/encyclopedia/war_casualties, viewed 15 November 2012.

- 8-59 The body responsible for advising the government on the establishment of the Unknown Australian Soldier at the Australian War Memorial did not consider that such recognition was appropriate.⁴⁷ In 2011, the Anzac Centenary Advisory Board recommended against the award of the VC to the Unknown Australian Soldier.⁴⁸ The Tribunal was not persuaded by the arguments in favour of a VC for the Unknown Australian Soldier.

Another form of medal

- 8-60 Former Senator Chris Schacht proposed that a Parliamentary Medal of Honour be instituted for worthy recipients who for some reason were not awarded a Defence medal for gallantry.⁴⁹ Another submission suggested the institution of a new medal called perhaps the Australian Cross or The Cross of Australia for the thirteen individuals under consideration.⁵⁰ In view of the proliferation of medals, and the argument concerning the difference between recognition and medallic award, the Tribunal was not persuaded by the arguments for these proposals.

A permanent or rotating exhibition

- 8-61 Rear Admiral James Goldrick [Retd], a respected naval historian, suggested that the Australian War Memorial establish a permanent exhibition recognising the outstanding gallantry of individuals who for some reason had not been awarded a VC. He argued that the historical research undertaken for such an exhibition would ensure that the deeds would be recognised and preserved for posterity. He suggested that achievements of perhaps 12 individuals could be highlighted, with a new set of individuals selected for each year. This proposal was similar to one from Air Chief Marshal Angus Houston (Retd), Chairman of the Anzac Centenary Advisory Board, who suggested that a travelling exhibition highlighting the gallantry of certain individuals could be initiated for the commemorations for the centenary of the Gallipoli landing, which are being expanded to cover the 'A Century of Service' celebrations, to be held between 2014 and 2018. Alternatively, other non-travelling exhibitions could be established. The Tribunal considered that these positive and helpful proposals should be explored further to recognise the 13 individuals, and others who also might have not been recognised by being awarded a VC.

47 Minutes of a meeting of the Australian War Memorial's Unknown Soldier Directing Group, 24 March 1993, attached to letter, Peter Rush, Assistant Secretary, Department of the Prime Minister and Cabinet, to Chair, Defence Honours and Awards Appeals Tribunal, 18 April 2012.

48 Oral submission, Air Chief Marshal Angus Houston (Retd), Chair of the Anzac Centenary Advisory Board, Canberra, 15 March 2012.

49 Oral submission by Mr Chris Schacht, Public Hearing Canberra, 14 March 2012.

50 Submission 216, Mr Philip Parsons.

CHAPTER NINE

SUMMARY OF INDIVIDUAL CASES

- 9-1 Part 2 of this Report provides the Tribunal's considerations and recommendations on each of the individuals mentioned in the Terms of Reference. The Tribunal's consideration and recommendations for these individuals are summarised below.

Gunner Albert Neil (Neale) Cleary

- 9-2 Gunner Cleary, a member of the 2/15th Field Regiment, 8th Division, 2nd Australian Imperial Force (AIF), was taken prisoner by the Japanese at the fall of Singapore on 15 February 1942. As a prisoner of war (POW), in July 1942 he was moved to the labour camp at Sandakan, Borneo, and in January 1945 was forced onto one of the 'death marches' to Ranau. He escaped, was recaptured, tortured, starved and died on 20 March 1945 in circumstances that convinced the Australian Military Court sitting in Rabaul on 21 May 1946 that he had been murdered by three guards.
- 9-3 The Tribunal received 14 written submissions and heard 6 oral submissions for and against Cleary receiving the Victoria Cross (VC) for Australia. Having reviewed the policy and processes followed by British and Australian authorities during the Second World War with respect to the recognition of POWs, and the inquiry previously made by the old tribunal that led to Cleary being awarded the Commendation for Gallantry, the Tribunal concluded that there is no basis for Cleary being granted further recognition under the Australian honours and awards system. A full assessment is in Chapter 11 of the Report.

Recommendation

- 9-4 The Tribunal recommends that no action be taken to award Gunner Albert Neil Cleary a VC for Australia or any further form of recognition for his gallantry or valour. The Tribunal did, however, note that a memorial to all those who suffered and died on the 'death marches' had been established at Ranau near to where Cleary had been chained to a tree just before he died, and recommends that the Australian Government continue to ensure this memorial is maintained in good order.

Midshipman Robert Ian Davies

- 9-5 Midshipman Davies joined the RAN in January 1937 and served in HMS *Repulse*. On 10 December 1941, HM Ships *Repulse* and *Prince of Wales* were attacked off the east coast of Malaya by a large force of Japanese bombers, and both ships were sunk. During the attack, Midshipman Davies was seen at his post firing an Oerlikon gun at enemy aircraft, and refused to abandon ship when the order was given. Davies was still firing as the ship sank and was killed. Davies was awarded a Mention in Despatches (MID) (Posthumous), one of 13 awarded for the action.
- 9-6 The Tribunal received nine written submissions and seven oral submissions in respect of Midshipman Davies. Having found the awards process to have been

administered correctly, the Tribunal next examined the merits of the case. None of the submitters presented any new evidence to sustain an alternative finding that Davies's gallantry was inadequately recognised. A full assessment is in Chapter 12 of the Report.

Recommendation

- 9-7 The Tribunal recommends no action be taken to award Midshipman Davies a VC for Australia or other further form of recognition for his gallantry or valour.

Leading Cook (Officers) Francis Bassett Emms

- 9-8 On 19 February 1942, Darwin was attacked by a force of Japanese bombers intent on destroying shipping and military installations. Leading Cook (O) Emms was on HMAS *Kara Kara*, a permanently moored boom gate vessel, in Darwin Harbour. Emms manned one of the machine guns throughout the first Japanese air attack, and continued to fire despite the risk to his life. Emms sustained fatal wounds, was evacuated, but died before reaching the hospital ship. For his actions Emms was awarded an MID (Posthumous).
- 9-9 The Tribunal received seven written submissions and heard six oral submissions regarding Leading Cook (O) Emms. The Tribunal conducted a process review, which determined that the awards process was followed correctly. The Tribunal also conducted a merits review to examine any new evidence. None was forthcoming. The Tribunal is therefore satisfied that there is no evidence to sustain an alternative finding that Emms's gallantry was previously inadequately recognised. A full assessment is in Chapter 13 of the Report.

Recommendation

- 9-10 The Tribunal recommends no action be taken to award Leading Cook (O) Francis Bassett Emms a VC for Australia or other further form of recognition for his gallantry or valour.

Lieutenant David John Hamer

- 9-11 Lieutenant Hamer, RAN, was an Air Defence Officer in HMAS *Australia* during the Lingayen Gulf landings in the Philippines in January 1945. The ship came under heavy and sustained attack by Japanese Kamikaze aircraft, received several hits and sustained many casualties. Hamer stayed at his post directing fire against the attackers, despite being directly exposed to the enemy suicide aircraft. For his action, Hamer was honoured with a Distinguished Service Cross (DSC).
- 9-12 The Tribunal received nine written submissions and heard seven oral submissions for and against Hamer receiving a VC. Having looked closely at the process followed and claims of new evidence, the Tribunal found that Hamer was appropriately awarded the DSC. A full assessment is in Chapter 14 of the Report.

Recommendation

- 9-13 The Tribunal recommends no action be taken to award Lieutenant David John Hamer a VC for Australia or other further form of recognition for his gallantry or valour.

Private John Simpson Kirkpatrick

- 9-14 Private Simpson Kirkpatrick, more commonly known as Simpson, was an Englishman who enlisted in the AIF at the start of the First World War. Simpson was a stretcher-bearer with 3rd Field Ambulance and landed at Gallipoli on 25 April 1915. Simpson used a donkey to bring lightly wounded soldiers from the ridges to the casualty clearing station on the beach. Simpson was killed on 19 May by Turkish machine-gun fire. The Simpson story became known throughout Australia. Simpson was awarded an MID for his service at Gallipoli.
- 9-15 The Tribunal received 23 written submissions that included reference to Private Simpson. Six oral submissions to the Tribunal were also made. Of those submissions, 12 supported additional recognition, 15 were against additional recognition and 2 took no position. The Tribunal found no evidence of any injustice and concluded that Simpson's case was properly considered at the time. Considering the circumstances in the early months at Gallipoli in 1915, the process and procedures were appropriate and fair. Contrary to some views, Simpson was not nominated for a VC, nor was there any material in letters, diaries or anecdotes from the time that could reasonably be used to describe Simpson's actions to a standard of gallantry that would have resulted in a VC recommendation being successful. The Tribunal found that Simpson's initiative and bravery was representative of all other stretcher-bearers of 3rd Field Ambulance and that he was appropriately honoured as such with an MID. A full assessment is in Chapter 15 of the Report.

Recommendation

- 9-16 The Tribunal recommends no action be taken to award Private John Simpson Kirkpatrick a VC for Australia or other further form of recognition for his gallantry or valour.

Able Seaman Dalmorton Joseph Owendale Rudd

- 9-17 Able Seaman Rudd served in the RAN in HMAS *Australia* for almost all of the First World War. At the end of February 1918 Rudd volunteered for special duty with the RN and took part in the shore raid on Zeebrugge, Belgium, on 22–23 April 1918. Following the raid, Rudd took part in a ballot to select a seaman to receive the VC, with those involved writing their nominee on a slip of paper. Another sailor was awarded the VC. Rudd himself was awarded the Distinguished Service Medal (DSM) as the result of what the Tribunal concluded was a fair process.
- 9-18 The Tribunal received four written submissions, none of which supported the award of the VC for Australia to Rudd. The Tribunal heard no oral submissions and concluded that despite being convicted of mutiny on HMAS *Australia* in 1919 and

gaoled for four months, Rudd retained his DSM. A full assessment is in Chapter 16 of the Report.

Recommendation

- 9-19 The Tribunal recommends that no action be taken to award Able Seaman Dalmorton Joseph Owendale Rudd a VC for Australia or other further form of recognition for his gallantry or valour.

Ordinary Seaman Edward Sheean

- 9-20 Ordinary Seaman Sheean joined the RAN in 1941 and served as an Oerlikon anti-aircraft gun loader in the corvette HMAS *Armidale*. On 29 November 1942, *Armidale* sailed to Timor to support the Allied troops there. On 1 December, *Armidale* came under Japanese aerial attack. A severely wounded Sheean was last seen strapped to his gun and firing at the aircraft as the ship sank. He received an MID (Posthumous) for this action.
- 9-21 The Tribunal received 21 written submissions and heard 13 oral submissions regarding Ordinary Seaman Sheean. The Tribunal concluded that the awards process was followed correctly and there was not sufficient evidence that there was a manifest injustice with regard to the outcome of the recommendation concerning Sheean. The Tribunal concluded that Sheean's actions displayed conspicuous gallantry but did not reach the particularly high standard required for recommendation for a VC. If Sheean had lived he might have been recommended for a higher Imperial honour (such as a second or third level gallantry award) rather than the fourth level MID, but such intermediate honours were not available posthumously in 1942, and the equivalent level Australian gallantry honours should not be recommended now. The Tribunal therefore concluded that it could not recommend that Ordinary Seaman Sheean be awarded the VC for Australia. A full assessment is in Chapter 17 of the Report.

Recommendation

- 9-22 The Tribunal recommends no action be taken to award Ordinary Seaman Sheean a VC for Australia or other Australian gallantry award. The Tribunal further recommends that the RAN continue the use of Sheean as a ship's name in perpetuity.

Leading Aircrewman Noel Ervin Shipp

- 9-23 Leading Aircrewman (LACM) Shipp was a helicopter door gunner with the RAN Helicopter Flight in Vietnam, which served with the US Army's 135th Assault Helicopter Company. On 31 May 1969, during a troop extraction, Shipp's helicopter came under heavy fire, was hit and crashed — killing all on board. Shipp was seen to be hanging out of the aircraft directing fire at the enemy as the aircraft went down. Shipp received no awards for his action.
- 9-24 The Tribunal received 13 written submissions and heard 8 oral submissions regarding LACM Shipp. In reviewing the awards process, the Tribunal found that

Shipp was recommended for a US Silver Star, but this was not awarded. The Tribunal also found that awards were subject to a quota. No recommendation for an Australian honour went forward, and the Tribunal concluded that this was a valid decision made by the relevant commander at the time and that due process was followed. In reviewing the merits of the case, no new or compelling evidence was provided by submitters and the Tribunal decided there was no basis to question the judgement of the commanders in 1969. A full assessment is in Chapter 18 of the Report.

Recommendation

- 9-25 The Tribunal recommends no action be taken to award LACM Noel Ervin Shipp a VC for Australia or other further form of recognition for his gallantry or valour.

Lieutenant Commander Henry Hugh Gordon Dacre Stoker

- 9-26 Lieutenant Commander Stoker was an RN submariner on loan to the RAN during the First World War. He was captain of the Australian submarine *AE2*, which served in the Dardanelles. There, *AE2* was the first Allied submarine to breach the minefield and enter the Sea of Marmara. Between 25 and 30 April 1915, *AE2* attacked several Turkish vessels, but after being hit, was forced to surrender. *AE2* was scuttled and the crew became POWs. For his service, Stoker was awarded a Distinguished Service Order (DSO) and an MID.
- 9-27 The Tribunal received 13 written submissions and heard 7 oral submissions regarding Lieutenant Commander Stoker. After reviewing the awards process and determining it was conducted fairly and in accordance with the rules, the Tribunal considered the merits of the case. No new or compelling evidence was produced by the submitters leading to a review of Stoker's action. The Tribunal concluded that Stoker was appropriately awarded the DSO. A full assessment is in Chapter 19 of the Report.

Recommendation

- 9-28 The Tribunal recommends no action be taken to award Lieutenant Commander Henry Hugh Gordon Dacre Stoker a VC for Australia or other further form of recognition for his gallantry or valour.

Captain Hector Macdonald Laws Waller

- 9-29 Captain Waller joined the RAN in 1913, and by 1942 had already seen action in the Mediterranean, where he was awarded a DSO and bar and two MIDs. In September 1941 Waller returned to Australia and took command of the cruiser HMAS *Perth*. In February 1942 *Perth* was involved in the Battle of the Java Sea, but was later sunk in the subsequent Battle of the Sunda Strait on 1 March 1942. Waller was not among the survivors. Waller received an MID (Posthumous) for the latter action.
- 9-30 The Tribunal received 13 written submissions and heard 9 oral submissions regarding Captain Waller. The Tribunal concluded that there were significant

failures in the process for considering awards for HMAS *Perth* and for Waller, amounting to an injustice. In examining the merits of the case, the Tribunal was conscious of what it said in paragraph 8-48 of this Report — that it should apply the standards and values of the time, and not those of contemporary Australian society and current expectations. While the Tribunal has characterised what Waller and *Perth* were ordered to do as being beyond the normal duty expected, even given the circumstances of early 1942 in the Netherlands East Indies, this was not the judgement made in late 1945 by the ACNB. The Tribunal concluded that, conspicuous though Waller's personal bravery was and his devotion to duty including to his crew to the very end extraordinary, these actions did not reach the particularly high standard required for recommendation for the VC. It seems more likely that, had Waller lived, he may have been recommended for a higher Imperial honour (such as a second Bar to his DSO — a second level award) rather than the MID and may have also been able to receive government approval to accept the highest level Dutch honour awarded to foreigners. But intermediate honours were not available posthumously in late 1945, and the equivalent level Australian gallantry honours should not be recommended now. The Tribunal therefore concluded that it could not recommend that Captain Waller be awarded the VC for Australia. A full assessment is in Chapter 20 of the Report.

Recommendation

- 9-31 The Tribunal recommends no action be taken to award Captain Hector Macdonald Laws Waller a VC for Australia or other form of further recognition for his gallantry or valour. The Tribunal further recommends that the RAN continue the use of *Waller* and *Perth* as ships' names in perpetuity.

HMAS *Yarra*

- 9-32 Because the actions concerning Lieutenant Commander Rankin, Lieutenant Commander Smith and Leading Seaman Taylor all took place in HMAS *Yarra*, the Tribunal first examined the circumstances concerning the ship's actions. On 6 February 1942 *Yarra* took part in a challenging and risky action to rescue 1804 men from the blazing transport, *Empress of Asia*, during a Japanese air attack while approaching Singapore. A month later, on 4 March 1942, *Yarra* was escorting a small convoy of three other ships when they were intercepted by a large Japanese naval force. Attempting to protect its convoy, *Yarra* engaged the enemy but was heavily out-gunned, and was sunk. Of *Yarra*'s total complement of 8 officers and 143 men, plus 40 survivors from another vessel, only 34 managed to escape to two rafts. Of these 34 men, only 13 men survived by the time they were found by a rescuing ship.
- 9-33 The Tribunal received 29 written submissions and 11 oral submissions in relation to HMAS *Yarra*. The Tribunal found that the ACNB received a copy of HMAS *Yarra*'s *Report of Proceedings* for February 1942, with apparent recommendations for recognition for certain individuals. While the documentation is scanty, the ACNB apparently took no action on these recommendations. Under the command arrangements at the time, action on the recommendations should have been taken by the Commodore Commanding China Force, but this force was disbanded

soon after. The Tribunal could find no report covering the sinking of *Yarra* prepared during the war. When recognition for *Yarra* was suggested at the end of the war, the Chief of Naval Staff stated 'I can only conclude that my predecessor examined this question fully in 1942'. The Tribunal concluded that inaction by the ACNB, in not considering whether members of the ship's company should have been recognised for their gallant action, amounted to maladministration. The Tribunal concluded that *Yarra's* case appeared to be one of a very small number where extraordinary gallantry had been mishandled, to an extent that it would be unreasonable not to recommend some form of recognition to remedy the injustice. A full assessment is in Chapter 21 of the Report.

Recommendation

- 9-34 While it is no longer possible because of lack of adequate evidence to determine what honours might or should have been awarded to respective individuals, the Tribunal recommends the award of a Unit Citation for Gallantry to HMAS *Yarra*, and that the name *Yarra* always remain a name of a fighting ship in the Australian Fleet.

Lieutenant Commander Robert William Rankin

- 9-35 Lieutenant Commander Rankin joined the RAN in 1921 and, between the wars, had postings in Australia and the United Kingdom. Rankin returned to Australia in late 1941, and was engaged in hydrographic work near Sydney when Japan entered the war. In late January 1942, he joined the sloop *Yarra*, assuming command on 11 February. On 4 March 1942, Rankin was killed when *Yarra* was sunk protecting a convoy from a large Japanese naval force. Rankin did not receive an honour for this action.
- 9-36 The Tribunal received 24 written submissions and 10 oral submissions in relation to Lieutenant Commander Rankin. The Tribunal concluded that Rankin's case was not handled properly at the time to the extent that a manifest injustice took place (see paragraph 9-33). However, the Tribunal concluded that there was insufficient evidence to recommend an individual gallantry honour to him. A full assessment is in Chapter 22 of the Report.

Recommendation

- 9-37 The Tribunal recommends no action be taken to award Lieutenant Commander Robert William Rankin a VC for Australia or other further form of recognition for his gallantry or valour. As noted in paragraph 9-34, the Tribunal recommends a Unit Citation for Gallantry to HMAS *Yarra*. Further, noting that an RAN submarine presently is named *Rankin*, the Tribunal recommends the perpetual recognition of Rankin in this manner.

Lieutenant Commander Francis Edward Smith

- 9-38 Lieutenant Commander Smith joined the RAN before the war and by April 1940 he was serving in HMAS *Yarra*. Early in the war, *Yarra* saw service in the Mediterranean, and was recalled to Australia in December 1941. At that

time, Smith was promoted to Lieutenant Commander and became *Yarra's* second-in-command. In early February 1942, while under air attack, *Yarra* rescued survivors from a stricken troopship *Empress of Asia*, but a month later, on 4 March, *Yarra* was escorting a convoy that came under attack from a large Japanese surface force, and was severely damaged. It is possible that Smith took over command of the stricken *Yarra* after the captain, Lieutenant Commander Rankin, was killed. Smith did not receive an award for this action.

- 9-39 The Tribunal received 7 written submissions and 4 oral submissions in relation to Lieutenant Commander Smith. The Tribunal concluded that Smith's case was not handled properly at the time to the extent that a manifest injustice took place (see paragraph 9-33). However, the Tribunal concluded that there was insufficient evidence to recommend an individual gallantry honour to him. A full assessment is in Chapter 23 of the Report.

Recommendation

- 9-40 The Tribunal recommends no action be taken to award Lieutenant Commander Francis Smith a VC for Australia or other further form of recognition for his gallantry or valour. As noted in paragraph 9-34, the Tribunal recommends a Unit Citation for Gallantry to HMAS *Yarra*.

Leading Seaman Ronald Taylor

- 9-41 Leading Seaman Taylor joined the RAN when he was 17, and in 1939 was posted to the sloop HMAS *Yarra*. Taylor was captain of No. 2 gun. *Yarra* served in the Mediterranean, and returned to the Pacific when Japan entered the war. In early February 1942, while under air attack, *Yarra* rescued survivors from a stricken troopship *Empress of Asia*, and Taylor received praise for his action during the rescue. On 4 March, *Yarra* was escorting a convoy that came under attack from a large Japanese surface force, and was severely damaged. Taylor ignored the order to abandon ship and remained alone at his gun, firing continually until he was killed shortly before *Yarra* sank. Taylor did not receive an award for this action.
- 9-42 The Tribunal received 14 written submissions and 6 oral submissions in relation to Leading Seaman Taylor. The Tribunal concluded that Taylor's case was not handled properly at the time to the extent that a manifest injustice took place (see paragraph 9-33). However, the Tribunal concluded that there was insufficient evidence to recommend an individual gallantry honour to him. A full assessment is in Chapter 24 of the Report.

Recommendation

- 9-43 The Tribunal recommends no action be taken to award Leading Seaman Ronald Taylor a VC for Australia or other further form of recognition for his gallantry or valour. As noted in paragraph 9-34, the Tribunal recommends a Unit Citation for Gallantry to HMAS *Yarra*.

CHAPTER TEN

CONCLUSIONS AND RECOMMENDATIONS

Summary of conclusions

- 10-1 Considering the discussion in the earlier chapters, the Tribunal concluded:
- The VC for Australia, created by Letters Patent, replaces the Imperial VC in the Australian system and has the same eligibility requirements. The VC for Australia is intended to be held in the same standing and value as the Imperial VC.
 - It is no longer possible for the Australian Government to recommend honours and awards in the Imperial honours and awards system. Specifically, the government cannot recommend to the Queen the award of an Imperial VC .
 - It is possible to make retrospective recommendations for Australian honours and the Tribunal has the power to make such recommendations to the Australian Government. The government could recommend them, including the VC for Australia, to the Queen, should it desire to do so.
 - Recommending honours for actions that took place many years ago should only be considered if there is a clear case of maladministration or, if proper process had been followed, compelling new evidence has emerged since the original decision was made.
 - Retrospective or revised gallantry honours should only be recommended when the potential recipients meet all the stringent requirements.
 - While the Letters Patent for the VC for Australia do not require three witness statements, the Tribunal would need to be satisfied that there was sufficient compelling evidence to warrant recommending to government a VC for Australia. The Tribunal, however, would need to bear in mind that the *Defence honours and awards manual* requires three witness statements, and endorsement through the chain of command to the Chief of Joint Operations, then through the Chief of the Defence Force to the Minister.
 - Extreme practical difficulties (such as gathering reliable evidence about past actions as well as the problem of second-guessing the commanders of the time) make retrospective recognition difficult and likely to damage the integrity of the Australian honours and awards system.
 - In general, retrospective recognition using the Australian honours and awards system would most likely damage the integrity of that system if considerable numbers of awards were made and would reflect adversely on awards made up to 100 years ago to Australians under the Imperial honours and awards system.
 - Inaction by the Australian Commonwealth Naval Board in not considering members of HMAS *Yarra*'s ship's company amounted to maladministration.
 - Inaction by the Australian Commonwealth Naval Board in not considering the non-surviving members of HMAS *Perth*'s ship's company amounted to an injustice.

- For the 13 individuals under consideration, not all of the above conditions can be met and none of them should be awarded a Defence honour in the Australian honours and awards system.
- Other, non-medallic means should be explored to mark retrospectively those whose actions are considered to be deserving of recognition but who have not been recognised by an award of the VC in the Imperial or Australian systems.
- It is always open to the Australian Parliament, should it choose to do so, to legislate for retrospective or new honours and awards.

Recommendations

10-2 The Tribunal makes the following recommendations:

Recommendation 1

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

Recommendation 2

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

Recommendation 3

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

Recommendation 4

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

Recommendation 5

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

Recommendation 6

The Department of Defence amend its *Honours and awards manual* to reflect the changes resulting from the establishment of the Defence Honours and Awards Appeals Tribunal and the advice from the Australian Government Solicitor that the Australian Parliament could pass a valid Act directing the Minister for Defence to recommend particular honours. The amended manual should, as required by section 8A of the *Freedom of Information Act 1982*, be made publicly available.