



**Australian Government**

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Defence Honours & Awards Tribunal

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

## **LETTER OF TRANSMISSION**

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

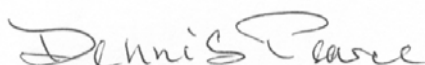
The Hon Dr Mike Kelly AM MP  
Parliamentary Secretary for Defence Support  
Parliament House  
Canberra ACT 2600

Dear Dr Kelly

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

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

Yours sincerely

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

Professor Dennis Pearce AO  
Chair

26 August 2009

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## **TERMS OF REFERENCE**

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

The Terms of Reference for the inquiry read:

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

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

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

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

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

## EXECUTIVE SUMMARY

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

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

## **RECOMMENDATIONS**

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

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

## **REPORT**

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

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

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

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

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

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

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

### **Conduct of the Inquiry**

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

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

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

Professor Dennis Pearce, AO (Chair)

Mr Adam Bodzioch

Vice Admiral Don Chalmers, AO (Retd)

Dr Jane Harte

Ms Christine Heazlewood

#### *Written Submissions*

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

#### *Appearances before the Tribunal*

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

### **Historical Background**

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

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

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

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



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

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

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

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

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

## **Medals Rules**

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Arguments supporting the claimants**

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

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

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

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

### **Arguments not supporting the claimants**

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

32. – 35.

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

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

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

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

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

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

### **Dominion Office Circular**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>8</sup> Section 6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

## Recommendations

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

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

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

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

## APPENDICES

## **Appendix1 – Submissions**

The Tribunal received submissions from the following people and organisations:

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

Multiple submissions were received from some people and organisations.

## **Appendix 2 – Tribunal Hearings**

### 23 October 2008

Chair: Professor Dennis Pearce

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

### 17 December 2008

Chair: Professor Dennis Pearce

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

Witnesses:

Mr Pat Clarke

Acting Director Honours and Awards  
Department of Defence

Mr Graham Wilson

Staff Officer Policy Research – Directorate of Honours and Awards

### 3 March 2009

Chair: Professor Dennis Pearce

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

### 3 April 2009

Chair: Professor Dennis Pearce

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

Witnesses:

Professor Edgar Gold AM

Adjunct Professor – University of Queensland

Mr Ernest Flint MBE ED

President

US Army Small Ships Association Inc

Mr Daryl Smith

Executive Officer

Australian Merchant Navy Awards Council

Mr Pat Clarke  
Acting Director Honours and Awards  
Department of Defence

12 May 2009

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

2 June 2009

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

Witnesses:

[Witnesses appeared in confidence] - (Teleconference)

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

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

28 July 2009

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

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

#### **Archival sources:**

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

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

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

##### **Series A432**

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

##### **Series A816**

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

##### **Series A2863**

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

1943/1 Navigation Act 1942

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

##### **Series MP1**

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

##### **Series MP138**

603/246/4876 Motor Vessel Jane Moorhead - Disposal

##### **Series MP278**

J1/1 USAFIA – Transportation Service

J2/1 USAFIA – requisitioning – general

##### **Series MP508**

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

### **Series MP729**

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

### **Series MP742**

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

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

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

### **Series MP981**

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

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

### **Series SP958**

Corinda 1937 Agreement and List of the Crew

Klang 1911 Agreement and List of the Crew

## **Australian War Memorial**

### **Official Records**

#### **Series AWM52**

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

#### **Series AWM54**

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

#### **Series AWM69**

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

## **Series AWM124**

41/80 US Army operated vessels

## **Private Records**

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

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

### **Series MT 9**

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

### **Series T 300**

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

### **Internet sources**

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

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



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

### **Secondary sources**

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

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

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

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