



Australian Government

Defence Honours and
Awards Appeals Tribunal



THE REPORT OF THE INQUIRY INTO
UNRESOLVED RECOGNITION FOR
PAST ACTS OF NAVAL AND MILITARY
GALLANTRY AND VALOUR





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LETTER OF TRANSMITTAL

INQUIRY INTO UNRESOLVED RECOGNITION FOR PAST ACTS OF NAVAL AND MILITARY GALLANTRY AND VALOUR

Senator The Hon. David Feeney
Parliamentary Secretary for Defence
Parliament House
Canberra ACT 2600

Dear Parliamentary Secretary,

I am pleased to present the report of the Defence Honours and Awards Appeals Tribunal's Inquiry into *Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour*.

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

In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011*, this report will be published on the Tribunal's website — www.defence-honours-tribunal.gov.au — 20 working days after the report is provided to you.

Yours sincerely,



Mr Alan Rose

Chair
Defence Honours and Awards Appeals Tribunal

21. 01. 2013.

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TERMS OF REFERENCE

On 21 February 2011, the Parliamentary Secretary for Defence, Senator The Hon. David Feeney, directed the Defence Honours and Awards Appeals Tribunal (the Tribunal) to inquire into the matter of Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour. The Tribunal considered draft terms of reference and, following receipt of its comments, the Parliamentary Secretary forwarded new Terms of Reference (as set out below) to the Tribunal on 29 April 2012.

The Tribunal is directed to inquire into and report on the appropriate recognition for specific acts of gallantry or valour performed by the following naval and military personnel:

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

The Tribunal is directed to make recommendations on the eligibility of the naval and military members, as listed, to be awarded the Victoria Cross, the Victoria Cross for Australia, or other forms of appropriate recognition for their gallantry or valour.

The Tribunal is to examine relevant documentary evidence and consider any other material relevant to these claims, including, but not limited to, any previous reviews conducted with regard to appropriate recognition for this service.

The Tribunal must consider the nature and context of the members' actions in relation to the criteria for Australian and Imperial awards in order to arrive at a fair and sustainable response to claims for appropriate recognition.

The Tribunal may interview such persons as it considers appropriate and consider material provided that is relevant to the Terms of Reference.

The Tribunal is to report to the Parliamentary Secretary for Defence on any recommendations that arise from the Inquiry.

In 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.

In addition, the Tribunal is also directed to receive submissions supporting the recognition of acts of gallantry or valour performed by other members of the Defence Force. Submissions are only to be received where supported by appropriate documentation. Submissions based on hearsay or anecdotal evidence need not be considered.

The Tribunal is to report to the Parliamentary Secretary for Defence on the detail of the additional submissions received in order for the government to determine whether a proposal for recognition should be referred to the Tribunal for review.

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 the Terms of Reference.

Submissions to the Tribunal close on Thursday 30 June 2011.

EXECUTIVE SUMMARY

- E-1 The Defence Honours and Awards Appeals Tribunal (the Tribunal) is established under the *Defence Act 1903* (Cwlth). Its functions are set out in s. 110UA of the Act. The minister may direct the Tribunal to hold an inquiry into a specified matter concerning honours or awards and the Tribunal must hold an inquiry, and report, with recommendations, to the minister.
- E-2 On 21 February 2011, the Parliamentary Secretary for Defence, Senator The Hon. David Feeney, requested the Tribunal to inquire into and report on Unresolved Recognition for Past Acts of Naval and Military Valour. The Terms of Reference for the Inquiry into Unresolved Recognition for Past Acts of Naval and Military Gallantry and Valour (the Inquiry) 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).
- E-3 This Inquiry was undertaken by the following members of the Tribunal:
- 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).
- E-4 The Tribunal commenced its inquiry on 16 March 2011. It received 166 written submissions from 125 individuals, organisations and the Department of Defence relating to its major Terms of Reference. Seventy-two people gave evidence before the Tribunal. The Tribunal also sought advice from various government departments, organisations and individuals, and conducted its own research. The Tribunal also received 174 submissions relating to claims concerning groups and individuals other than those named in the Terms of Reference.
- E-5 To meet the various tasks set out in the Terms of Reference, the Report is divided into three parts: Part One, General considerations; Part Two, Individual cases; and Part Three, Other nominations from members of the public.

General considerations

- E-6 In order to ascertain whether the claims for recognition of the individuals named in the Terms of Reference were properly dealt with, the Tribunal examined the rules and administrative process for awarding the Victoria Cross (VC) and other honours under the Imperial system. The key facts are:
- The VC could be awarded for gallantry, valour, self-sacrifice or extreme devotion to duty in the presence of the enemy. (For further discussion see paragraph 4-5.)
 - Only the VC and the Mention in Despatches (MID) could be awarded posthumously for actions in the presence of the enemy (paragraph 4-14). Contrary to some misconceptions, the MID was a highly regarded honour.

Further, a posthumous MID was a very significant honour in that the recipient, had he lived, might well have received a much higher honour.

- The Royal Warrant for the VC does not stipulate a requirement for three witnesses. The British Army (and by extension the Australian Army) promulgated instructions requiring three witness statements, but that requirement did not apply in the Navy or Air Force (paragraph 4-19).
- Recommendations were forwarded through the chains of command to the Admiralty, War Office and Air Ministry before approval by the Sovereign (paragraph 4-17).
- Australian service personnel were eligible for awards under the Imperial system, and the rules and processes were similar to those applying in the British forces. That is, when Australian units were serving under British command in the First World War, part of the Second World War, the Malayan Emergency and Confrontation, recommendations were forwarded through the British chain of command to London. In the Pacific in the Second World War, in the Korean War and in the Vietnam War, recommendations were forwarded to Australia and then from the Australian Government to London. In the case of Royal Australian Navy (RAN) units serving on the Australia Station during the Second World War, recommendations were forwarded by the RAN to London without passing through the Australian Government. (For further discussion see paragraphs 4-30 to 4-65.)

E-7 The Australian honours and awards system was introduced during 1975–1992. Defence honours and awards are considerably different from those within the Imperial system. For example, the Australian system does not discriminate between rank or service. The VC for Australia, created by Letters Patent, replaces the Imperial VC in the Australian system and has the same eligibility requirements. The administrative processes set out in the *Defence honours and awards manual* are almost the same as those applying to the Imperial VC. While the manual requires three witness statements, the Letters Patent do not, and the Minister for Defence is only ‘required to be satisfied’ that an act of valour should be recognised by the award of the VC for Australia when forwarding a recommendation to the Governor-General. The VC for Australia is intended to be held in the same standing and value as the Imperial VC (paragraph 5-4).

E-8 A significant difference between the two systems is that, despite the fact that Australian Defence honours are discretionary, decisions concerning those honours can be reviewed by the Defence Honours and Awards Appeals Tribunal. This means that recommendations to the Minister for a Defence honour no longer remain the sole prerogative of the military (for further discussion see paragraphs 2-8 and 5-11).

E-9 In 1965, Queen Elizabeth reaffirmed her father’s 1952 decision that there would be no further awards for service in the Second World War. In 1992 the Prime Minister of Australia, Paul Keating, announced that Australia would no longer make recommendations for Imperial awards. The British Government then amended its statutes so that British honours would no longer be available to Australians (i.e. if awarded, they would be treated in Australia as foreign decorations). Therefore, when the Australian Government was considering retrospective honours for the

Vietnam War in the form of the Vietnam end of war list, the Prime Minister, John Howard, stated that the honours would be made in the Australian honours and awards system (for further discussion see paragraphs 6-6 and 6-15).

- E-10 The Tribunal concluded that it is no longer possible for the Australian Government to recommend retrospective honours within the Imperial system, including the Imperial VC. The Tribunal could, however, recommend that the government award a VC for Australia retrospectively, and if the government agreed, it could recommend this to the Sovereign (for further discussion see paragraph 6-23).
- E-11 The Tribunal noted that various members of Parliament have sought to introduce legislation to award retrospective honours in the Australian system, and that this avenue remained open to the Parliament if it chose to exercise it. Such legislation would be valid under the Australian Constitution (for further discussion see paragraph 6-26).
- E-12 The Tribunal then turned to the general claims made in the submissions for and against retrospective awards. There were five main issues: recognition, the precedent of previous reviews, the lack of a VC for the RAN, comparable actions, and maintenance of the integrity of the Australian honours and awards system.

Recognition

- E-13 Submissions argued that retrospective honours would allow the community to recognise and honour extraordinary Australian servicemen who have not been adequately recognised, and that the Australian honours and awards system should be adapted to this purpose. The Tribunal noted the changes in Australian community attitudes. The Tribunal was not, however, persuaded that gallantry medals within the Australian 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. Further, the Tribunal did not 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 the Australian community in the past has come to accept (for further discussion see paragraph 8-3).

The precedent of previous reviews

- E-14 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. These cases of alleged retrospectivity resulted from several government reviews, including the 1997 Vietnam end of war list, but the Tribunal concluded that, in the main, honours had been awarded retrospectively because there was a flaw in the original process. However, the Tribunal also concluded that the 2008 *Review of recognition for the Battle of Long Tan* had recommended retrospective honours based not on evidence of a flawed process but as a result of reconsideration of the circumstances with the advantage of 40 years of hindsight. Such an approach would open the possibility of reviewing all decisions made contemporaneously by a competent authority. The Tribunal

was not persuaded that the existence of past cases of retrospective awards should determine its decisions in this Inquiry (for further discussion see paragraphs 8-5 to 8-9).

Lack of a Victoria Cross for the RAN

E-15 Some submissions claimed 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 (Royal Navy), one or more VCs should now be awarded to members of that service. It was argued that procedures in the RAN made it more difficult for commanders to recommend a VC for their subordinates. Further, unlike in the Army and Air Force in the Pacific, RAN recommendations went directly from the Australian Commonwealth Naval Board (ACNB) to the Admiralty, which, it was claimed, was biased against RAN personnel. The Tribunal examined these issues in considerable depth and concluded that RAN procedures allowed for the recommendation of VCs, although the ACNB could have done more to make the procedures widely known throughout the RAN. Further, 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 procedures, the ACNB took no positive action to ensure that members of the RAN received the most appropriate honour. Notwithstanding this shortcoming, using the extant RAN system, many RAN personnel serving in the Pacific and on the Australia Station were awarded gallantry medals. The Tribunal could find no evidence of alleged British bias against Australians with regard to decorations. The Tribunal rejected the claim that VCs should be awarded simply because none had yet been awarded to the RAN (for further discussion see paragraphs 8-10 to 8-17).

Comparable actions

E-16 A number of submissions compared the actions of some of the individuals named in the Terms of Reference with what were claimed to be similar gallant actions performed elsewhere by another person who had been awarded a VC. The Tribunal noted that no two cases are the same, and that commanders and committees which recommend honours do so solely on the merits of the individual case. The Tribunal concluded that an alleged precedent was not a basis for recommending a retrospective honour. (For further discussion see paragraphs 8-21 to 8-25.)

Maintenance of the integrity of the honours and awards system

E-17 The Tribunal received submissions 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 of Australia (RSL) and private citizens stating that to award VCs or other gallantry honours retrospectively would undermine the integrity of the Australian honours

and awards system. The Tribunal agreed that this would be the case unless the evidence was compelling. But a major problem exists in trying to find compelling evidence, sometimes up to a century after the event, to support a recommendation that an individual should be awarded an honour. In all the submissions and in its own research the Tribunal found no case where allegedly new evidence proved acceptable or compelling. Further, there was the matter of equity. If one individual was singled out for a retrospective honour, every other alleged case would need to be examined, and every previously awarded VC would need to be reconsidered with the possibility that one or some might need to be withdrawn. As one submitter stated, such a task would be 'beyond the capacity of any Tribunal or any other body' (for further discussion see paragraphs 8-31 to 8-37).

Guidelines

- E-18 The Tribunal then considered how to deal with claims of retrospective awards for each individual, and developed a series of guidelines (elaborated further at paragraph 8-48) for reviewing each case. These were:
- To undertake a process review to determine whether due process had been followed. If due process had been followed, if there was no maladministration, and if there is no new evidence, then the original decision should remain unchanged.
 - Where, if there was a case of maladministration, or if compelling new evidence has appeared that was not available at the time of the original decision, the Tribunal should undertake a merits review. In the Tribunal's view, however, maladministration or compelling new evidence does not of itself justify recommending an Australian honour to recognise the service or actions 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.
 - Retrospective and revised awards in the Australian honours and awards system should only be contemplated in the most compelling of cases.
 - New evidence should be assessed by reference to the standards and regulations of the time.
 - Similar cases should not be used as a precedent or for comparison.
 - The impact of retrospective recognition on the standing of the Imperial honours already awarded to Australians should be considered.
 - Retrospective or revised gallantry honours should only be awarded when the actions of potential recipients meet all the stringent eligibility requirements.
- E-19 In applying these guidelines the Tribunal kept in mind the Terms of Reference requirement to consider the impact of new or revised awards on the integrity of the Australian honours and awards system. Considering all the evidence and arguments, the Tribunal concluded that, unless done to address a clear injustice, widespread retrospective recognition was generally not desirable because

this proliferation would damage the integrity of the Australian honours and awards system.

- E-20 The Tribunal also kept in mind that the Australian Defence honours system was not established to rectify past injustices caused solely by shortcomings in the Imperial system. Hence, in considering possible retrospective honours, the Tribunal concluded that it should apply the rules as they were at the time. One pertinent rule under the Imperial system was that only the VC and the MID could be awarded posthumously for actions in the presence of the enemy. The Tribunal therefore concluded that in considering possible retrospective posthumous honours for an action in the period when the Imperial system applied, it could only recommend the equivalent honours in the Australian system, namely the VC for Australia and the Commendation for Gallantry. To do otherwise would open the Tribunal to examining all the other cases where a posthumous MID had been awarded. This approach applied particularly when considering the cases of Midshipman Davies, Leading Cook Emms, Ordinary Seaman Sheean and Captain Waller.

Individual cases

- E-21 The Tribunal applied these guidelines when considering the claims of each of the individuals named in the Terms of Reference and made the conclusions set out in paragraphs E-22 to E-35.

Gunner Albert Neil (Neale) Cleary

- E-22 Having reviewed the policy and processes followed by British and Australian authorities during the Second World War with respect to the recognition of prisoners of war, the Tribunal concluded that there is no basis for Cleary being granted further recognition under the Australian honours and awards system. [See Chapter 11.]

Midshipman Robert Ian Davies

- E-23 The Tribunal found that the awards process was administered correctly and that there was no new evidence to sustain an alternative finding that Davies's gallantry was inadequately recognised. [See Chapter 12.]

Leading Cook (Officers) Francis Bassett Emms

- E-24 The Tribunal determined that the awards process was followed correctly and that there was no new evidence to sustain an alternative finding that Emms's gallantry was inadequately recognised. [See Chapter 13.]

Lieutenant David John Hamer

- E-25 Having looked closely at the process followed and claims of new evidence, the Tribunal found that Hamer was appropriately honoured with the award of the Distinguished Service Cross. [See Chapter 14.]

Private John Simpson Kirkpatrick

- E-26 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. (See Chapter 15.)

Able Seaman Dalmorton Joseph Owendale Rudd

- E-27 The Tribunal noted that after the Zeebrugge raid in 1918, Rudd took part in a ballot (with those involved writing their nominee on a slip of paper) to determine who should be awarded a VC. Another sailor was awarded the VC. The Tribunal concluded that the process by which Rudd was awarded the Distinguished Service Medal (DSM) was fair and appropriate recognition. Further, and contrary to some accounts, Rudd did not forfeit his DSM as a result of a court martial for mutiny in 1919. (See Chapter 16.)

Ordinary Seaman Edward Sheean

- E-28 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. (See Chapter 17.)

Leading Aircrewman Noel Ervin Shipp

- E-29 The Tribunal found that Shipp's commander submitted no recommendation for an Australian honour for him. This was a valid decision and due process was followed. No new evidence was provided, and the Tribunal concluded that the judgements made by the appropriate authorities at the time were valid. (See Chapter 18.)

Lieutenant Commander Henry Hugh Gordon Dacre Stoker

- E-30 The Tribunal concluded that the process was conducted fairly and in accordance with the rules. There was no new or compelling evidence. Stoker was appropriately awarded the Distinguished Service Order (DSO) and an MID. (See Chapter 19.)

Captain Hector Macdonald Laws Waller

- E-31 The Tribunal concluded that there were significant failures in the process for considering awards for HMAS *Perth* and Waller, amounting to an injustice. However, in examining the merits of the case, the Tribunal was conscious 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. (See Chapter 20.)

HMAS *Yarra*

- E-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. 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 that injustice. While it is not possible, because of lack of adequate evidence, to determine what honours might or should have been awarded to the 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. (See Chapter 21.)

Lieutenant Commander Robert William Rankin

- E-33 The Tribunal concluded that Rankin's case was not handled properly at the time, to the extent that a manifest injustice took place. While the Tribunal was able to conclude that Rankin's actions were clearly gallant, it was not persuaded they met the exceptionally stringent criteria for the VC for Australia. As noted in paragraph E-32, the Tribunal recommends a Unit Citation for Gallantry to HMAS *Yarra*. Further, noting that an RAN ship is presently named HMAS *Rankin*, the Tribunal recommends the perpetual recognition of Rankin in this manner. (See Chapter 22.)

Lieutenant Commander Francis Edward Smith

E-34 The Tribunal concluded that Smith's case was not handled properly at the time, to the extent that a manifest injustice took place. However, the Tribunal concluded that there was insufficient evidence to recommend an individual gallantry honour to him. As noted in paragraph E-32, the Tribunal recommends a Unit Citation for Gallantry to HMAS *Yarra* (see Chapter 23).

Leading Seaman Ronald Taylor

E-35 The Tribunal concluded that Taylor's case was not handled properly at the time, to the extent that a manifest injustice took place. However, the Tribunal concluded that there was insufficient evidence to recommend an individual gallantry honour to him. As noted in paragraph E-32, the Tribunal recommends a Unit Citation for Gallantry to HMAS *Yarra*. (See Chapter 24.)

Summary of conclusions

- 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.

Tribunal recommendations

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.

Availability of material

The Tribunal received 166 written submissions and heard 72 oral submissions from government agencies, individuals and those representing various organisations, which are listed in Appendixes 1 and 2, respectively. Submissions, where permission to publish has been granted, are available to the public at the Tribunal's website at www.defence-honours-tribunal.gov.au.

Acknowledgements

The Tribunal acknowledges and thanks its Executive Officer, Ms Mary Bermingham, and its Deputy Executive Officer, Mr Jay Kopplemann, and the remainder of the Tribunal's secretariat for their crucial assistance with research and administration during this Inquiry.

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 Starcevic 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.



PART TWO INDIVIDUAL CASES



CHAPTER ELEVEN

GUNNER ALBERT NEIL (NEALE) CLEARY

- 11-1 Gunner Albert Neil Cleary (known as Neil or Neale) was born in Geelong on 16 June 1922.¹ He joined the Citizen Military Forces (CMF) on 11 June 1940, stating that he was a labourer and unmarried. After serving 315 days in the CMF he was discharged in order to join the Second Australian Imperial Force on 22 April 1941.
- 11-2 During Cleary's early period of service with the CMF, he was absent without leave on a number of occasions. On one occasion, in April 1941, he was absent for a week, and was punished with five days' detention. While serving with the 2/2nd Field Regiment he was again absent without leave in June 1941. In August, now a reinforcement for the 4th Anti-Tank Regiment, and en route to Singapore, he was absent for four days from a transport ship docked at Fremantle. He was given 28 days' detention, which he served in Western Australia. At about the same time he was admonished for 'conduct to prejudice of good order and military discipline' and fined for insubordinate language.² On release from detention he was absent without leave twice more before sailing to Singapore, where he arrived in October 1941.
- 11-3 Cleary was transferred from the 4th Anti-Tank Regiment to the 2/15th Field Regiment on 17 January 1942. That regiment had gone into action two days earlier, and Cleary was probably sent to it as a replacement for casualties. The 2/15th Field Regiment was captured when Singapore surrendered to the Japanese on 15 February 1942. The Australian 8th Division, including the 2/15th Field Regiment, was imprisoned at Selerang Barracks, Changi.
- 11-4 From May 1942 the Japanese began sending groups of prisoners of war (POWs) for labouring work elsewhere in Asia and the Pacific. In July, a detachment of 103 members of the 2/15th, including Cleary, was sent to Sandakan, Borneo, where they constructed an airfield along with about 2,500 other British and Australian POWs.³ Cleary was one of the 101 members of the 2/15th Regiment sent to Sandakan who did not survive. He died on 20 March 1945 at Ranau.⁴



Gunner Albert Neil (Neale) Cleary

Recognition for service

- 11-5 For his Army service, Gunner Cleary was entitled to the following Defence honours and awards:
- Commendation for Gallantry (Australian, 2010)

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

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

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

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

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

What has led to the review?

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

Submissions

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

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

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

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

Written submissions

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

Oral submissions

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

Background to Sandakan–Ranau prisoner of war camps

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

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

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

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

Description of action under consideration

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

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

¹¹ *ibid.*, p. 205.

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

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

Chain of command for honours and awards

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

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

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

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

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

Arguments put forward for the award

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

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

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

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

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

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

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

22 Department of Veterans' Affairs (DVA), 'Gunner Cleary', DVA, www.vv2australia.gov.au/behindwire/cleary.html, viewed 1 December 2011.

Arguments put forward against the award

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

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

²⁴ Mrs Lynette Silver, Submission 70.

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

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

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

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

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

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

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

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

Tribunal consideration of the process

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

25 Reid, *Sandakan 1942–1945*, p. 40.

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

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

28 Mr Graham Wilson, Submission 99.

29 Response from Dr Peter Stanley, 26 January 2012.

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

Tribunal review of the merits of the case

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

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

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

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

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

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

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

Tribunal conclusion

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

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

Tribunal recommendation

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

CHAPTER TWELVE

MIDSHIPMAN ROBERT IAN DAVIES

12-1 Midshipman Robert Ian Davies was born on 13 November 1923 at Greenwich, New South Wales, and entered the Royal Australian Naval College (RANC) as a Cadet Midshipman on 1 January 1937.¹ He graduated in December 1940.² In January 1941 he was promoted to Midshipman and sent to England for sea training. From 17 February until 7 March 1941 he served in HMS *Victory* at the Portsmouth Dockyard.³ On 8 March 1941, Davies joined the RN battle cruiser HMS *Repulse* as a Substantive Midshipman, along with fellow RAN Midshipman Guy Griffiths. Although involved in little action, the ship spent long periods at sea, and Davies demonstrated his mettle as an Officer of Quarters of close-range guns.⁴



Midshipman Robert Ian Davies

(Photograph courtesy of the Davies family)

12-2 In November 1941, HMS *Repulse*, the recently commissioned battleship HMS *Prince of Wales* and four destroyers were designated as a capital ship force, Force Z, and dispatched to Singapore. On 10 December 1941, after sailing to confront Japanese naval support for landings in Malaya at Kota Bharu and Kuantan, Force Z was located initially by a Japanese submarine and later by air reconnaissance. Force Z was then attacked by bomber and torpedo bomber aircraft of the Japanese 22nd Air Flotilla based around Saigon, Indochina (now Vietnam). HM Ships *Prince of Wales* and *Repulse* were both sunk. The attacks saw many acts of gallantry reported and Midshipman Davies, who was killed in action, was honoured with a Mention in Despatches (MID) (Posthumous). His commanders said that he showed the 'very highest degree of bravery and leadership which it is possible for an officer to show'.⁵ As the *Repulse* was sinking, he was seen at an Oerlikon gun still engaging the Japanese aircraft that were attacking the ship.⁶ It is this action that is the subject of this inquiry.

Recognition for service

12-3 For his naval service, Midshipman Robert Ian Davies was entitled to the following Defence honours and awards:

- 1939–1945 Star
- Pacific Star
- War Medal 1939–1945

¹ Record of service (Officers), Davies, Robert Ian, NAA: A6769, DAVIES R I.

² *ibid.*

³ *ibid.*

⁴ Darryl Bennet, 'Davies, Robert Ian (Bob) (1923–1941)', in *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, adb.anu.edu.au/biography/davies-robert-ian-bob-9916/text17559, viewed 27 January 2012.

⁵ Letter, Lieutenant OC Hayes to Mrs Davies, 5 January 1942, copy provided to the Tribunal by the Davies family.

⁶ Letter, Captain Tennant to Mrs Davies, 10 January 1942, copy provided to the Tribunal by the Davies family.

- Australia Service Medal 1939–1945
- Mention in Despatches (Posthumous).

What has led to the review?

- 12-4 While the family of Midshipman Davies strongly support his consideration, they had not previously sought government or any other review of his recognition. In an oral submission to the Tribunal, Mr David Amos, a nephew of Davies, said that neither he nor his family had ever been approached by anyone seeking to review Midshipman Davies's extant recognition prior to the inclusion of his name on the list of 13 for review by the Tribunal. The family had first learned of the nomination when it was published in the print media announcing the review. Nevertheless, as a family, their reaction was one of honour and pride, and they felt that Davies's inclusion for review was something very special.⁷
- 12-5 During an oral submission to the Tribunal, Rear Admiral Guy Griffiths, RAN (Retd), said he was aware that some people were advocating that Davies 'had done the same thing as Sheean [Ordinary Seaman Edward Sheean, see Chapter 17] and should be recognised with a VC'.⁸
- 12-6 Midshipman Davies was formally nominated for review in the Terms of Reference, after being proposed by the Chief of the Defence Force in a ministerial submission to the government.⁹ Defence did not provide any material to the Tribunal to suggest that Davies's recognition was inadequate and was not able to provide any of the submissions that it claimed had led to his name being included in the Terms of Reference.

Submissions

- 12-7 The Tribunal received nine written submissions that included reference to Midshipman Davies. Seven of those submitters also made reference to Midshipman Davies in oral submissions. Of those submissions, four supported additional recognition, three were against additional recognition and two took no position.

Written submissions

- Submission 86 — Mr John Bradford (for)
- Submission 89 — Nowra Greenwell Point RSL Sub-Branch (no position taken)
- Submission 92 — Mr Mike Carlton (for)
- Submission 99 — Mr Graham Wilson (against)
- Submission 102 — Mr David Amos (for)
- Submission 123 — Mr Peter Cooke-Russell, National Vice President, The Naval Association of Australia (for)

⁷ Oral submission by Mr David Amos, Public Hearing Canberra, 2 December 2011.

⁸ Oral submission by Rear Admiral Guy Griffiths, RAN (Retd), Public Hearing Sydney, 9 February 2011.

⁹ 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.

- g. Submission 124 — Mr Richard Pelvin (against)
- h. Submission 142 — Mr Graham Harris, National President, The Navy League of Australia (no position taken)
- i. Submission 174 — Rear Admiral Guy Griffiths, RAN (Retd), (against).

Oral submissions

- a. Mr Graham Wilson — Public Hearing Canberra — 1 December 2011 (against)
- b. Mr Richard Pelvin — Public Hearing Canberra — 2 December 2011 (against)
- c. Mr David Amos — Public Hearing Canberra — 2 December 2011 (for)
- d. Mr Peter Cooke-Russell, National Vice President, The Naval Association of Australia — Public Hearing Canberra — 2 December 2011 (for)
- e. Mr Mike Carlton — Public Hearing Sydney — 9 February 2012 (for)
- f. Rear Admiral Guy Griffiths, RAN (Retd) — Public Hearing Sydney — 9 February 2012 (against)
- g. Mr John Bradford — Public Hearing Adelaide — 14 February 2012 (for).

Background

The formation and deployment of Force Z

- 12-8 The Allies had been at war with Germany since September 1939. On 4 November 1941 the British Prime Minister, Winston Churchill, wrote to his Russian ally, Joseph Stalin, to inform him that 'with the object of keeping Japan quiet we are sending our latest battleship, *Prince of Wales*, which can catch and kill any Japanese ship, into the Indian Ocean'.¹⁰ To achieve this intent, a capital ship force was formed, designated Force Z.¹¹ It comprised HMS *Prince of Wales*, the battle cruiser HMS *Repulse* and four destroyers. Force Z was commanded by Admiral Sir Thomas Phillips, RN, and deployed to the Far East for assignment to the China Station, where Phillips had been designated to succeed Vice Admiral Sir Geoffrey Layton, RN, as Commander-in-Chief.¹²
- 12-9 Force Z arrived in Singapore on 2 December 1941. The Admiralty then decided to merge the China Station into a new command, Eastern Fleet, and Force Z was assigned to that command. Layton relinquished command to Phillips at 0800 on 8 December 1941.¹³ That evening, Phillips sailed from Singapore in HMS *Prince of Wales*, with HM Ships *Repulse*, *Express*, *Electra*, *Tenedos* and HMAS *Vampire* in company. His intention was to engage Japanese naval forces off the eastern coasts of Malaya and southern Thailand. The Air Force could not provide fighter

¹⁰ Barry Gough, 'Prince of Wales and Repulse: Churchill's "veiled threat" reconsidered', *Finest Hour*, no. 139, 2007, www.winstonchurchill.org/support/the-churchill-centre/publications/finest-hour/issues-109-to-144/no-139/840-prince-of-wales-and-repulse-churchills-veiled-threat-reconsidered, viewed 30 July 2012.

¹¹ *ibid.*

¹² In September 1940, Vice Admiral Layton, RN, took command of China Station. In May 1941 he was advised that he would be succeeded by Admiral Sir Thomas Phillips. *Supplement to the London Gazette*, no. 38214, 26 February 1942, p. 1.

¹³ *Supplement to the London Gazette*, no. 38214, 26 February 1948, p. 1237.

cover for Force Z, so the best chance of success in such circumstances would be to make a surprise attack on the Japanese ships and then withdraw. Unknown to Phillips, his ships had been initially sighted at around 1400 on 9 December by a Japanese submarine, which reported their position to the 22nd Air Flotilla based in the vicinity of Saigon, Indochina.¹⁴ Later in the afternoon, Japanese reconnaissance aircraft were spotted. Believing his mission to be compromised, Phillips abandoned his original plan and altered course on 10 December to intercept ships supporting a reported Japanese landing in the vicinity of Kuantan. This report later proved to be false.¹⁵

Japanese attack and the sinking of HMS *Repulse*

- 12-10 As Force Z moved toward Kuantan, the ships were sighted on 10 December at 0315 by a second Japanese submarine and another contact report was sent to the 22nd Air Flotilla. It gave a new position, indicating that the ships were heading south and appeared to be returning to Singapore. At 0600, a Japanese bomber force was launched to search for the ships. This was followed at about 0700 by a striking force of some 88 aircraft (27 bombers and 61 torpedo bombers) that also took off to search for the ships. Force Z was sighted and its position fixed at 1100.¹⁶
- 12-11 Shortly after, the Japanese high-level bombers and torpedo bombers began their attacks on *Repulse* and *Prince of Wales*. Wave after wave of Japanese aircraft attacked and inflicted considerable damage on both ships. *Repulse*'s Commanding Officer, Captain William Tennant, RN, skilfully manoeuvred the ship to avoid incoming torpedoes, but this was to no avail. Soon after midday, with *Repulse* having sustained some five torpedo hits, Tennant ordered 'Everyone on deck' and then some minutes later to 'Abandon ship'. All the while, control was assisted by the ship's broadcasting system, which remained operational except in some compartments down below aft, where the orders had to be passed by word of mouth.¹⁷ The air attacks continued as the *Repulse* was sinking.
- 12-12 Rear Admiral Griffiths recalled:
- 'Abandon ship' was ordered at 12:25 pm and was followed by an orderly but tense evacuation up ladders and through hatches to the main deck level in the vicinity of 'B' turret. The mess deck seemed deserted and the ship's starboard-side scuttles (portholes) were open. The increasing list of the ship to port still allowed one to clamber up on the sloping deck and exit through a scuttle to the starboard side of the ship. Our fine old battle cruiser sank at 12:33 pm and I remember turning back to see the last of her bow disappear beneath the surface.¹⁸
- 12-13 As these events were unfolding off the east coast of Malaya, Layton was in Singapore embarked in SS *Dominion Monarch* readying for departure to

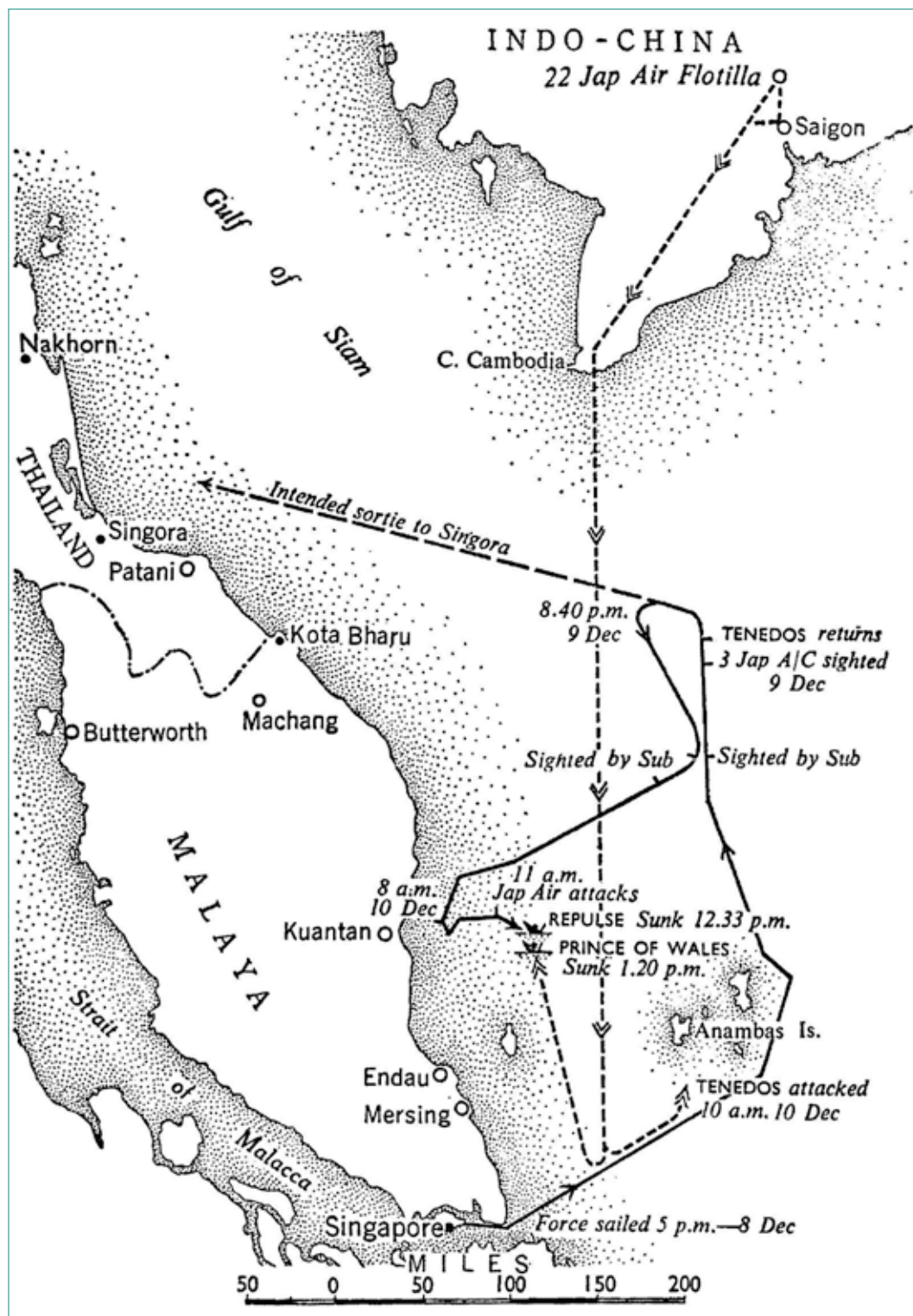
14 The 22nd Air Flotilla was a land-based force operating bomber, fighter and reconnaissance aircraft from the vicinity of Saigon. C Shores, B Cull & Y Izawa, *Bloody shambles: the first comprehensive account of air operations over South-East Asia — December 1941 – April 1942*, vol. 1, Grub Street, London, 1992, p. 54.

15 *Third Supplement to the London Gazette*, no. 38216, 26 February 1948, p. 1368.

16 'Intelligence — reports, enemy plans and preparation and situation reports', Extract from files of G-2 WD Intelligence Supreme Commander of the Allied Powers, AWM54, 423/6/30.

17 Further report by Tennant, December 1941. *Supplement to the London Gazette*, no. 38214, 26 February 1948, pp. 1240–1242.

18 Guy Griffiths, 'Abandon ship' in R Nichols, 'Short-lived menace', *Wartime*, no. 17, autumn 2002, p. 24.



Source: Douglas Gillison, *Royal Australian Air Force 1939–1942*, vol. 1, *Australia in the War of 1939–1945*, series 3, Air, Australian War Memorial, Canberra, 1962, p. 252.

Map 1 The action leading to the sinking of *Repulse* and *Prince of Wales*

London at 1530.¹⁹ The news of Phillips having perished in the action, and with Layton having not yet departed Singapore, saw his immediate appointment as Commander-in-Chief of the Eastern Fleet at 1500 on 10 December 1941. Layton had no responsibility at any stage for the operations of Force Z or for any other operations between 0800 on 8 December and 1500 on 10 December, 1941.²⁰

- 12-14 From *Repulse's* complement of 1,309 men, 27 officers and 486 ratings were lost. Admiral Phillips and his Flag Captain, Captain Jack Leach, went down with the *Prince of Wales*; a total of 327 officers and ratings were lost from a complement of 1,612.²¹ A total of four Japanese aircraft were destroyed.²²

Eyewitness and other accounts of Davies's actions

- 12-15 While there are many witness accounts of the action involving the sinking of *Repulse* and *Prince of Wales*, no direct eyewitness accounts have emerged of the specific actions of Midshipman Davies. The only primary sources that describe his actions are Captain Tennant's nominations for honours sent to the Admiralty and the personal letters written in January 1942 by Tennant and Lieutenant OC Hayes, RN,²³ to Davies's mother. They said that Davies 'showed the very highest degree of bravery and leadership which it is possible for an officer to show'.²⁴ As the ship was sinking, he was seen at an Oerlikon gun still engaging the Japanese aircraft that were attacking the ship.²⁵ It was also reported in the Australian media at the time that as Davies was continuing to fire, he cursed anyone who got in the way of his sights.²⁶ In his oral submission to the Tribunal, Rear Admiral Griffiths said of Davies's action that his 'duty at his gun was Fire Distribution Officer and he would have been tapping the aimer on the shoulder and pointing out another aircraft to engage, when he probably told his crew to abandon ship as they had been ordered to do so, [then he] strapped himself in and decided to have a crack himself. A pretty noble gesture and brave one; tragic'.²⁷

Chain of command for honours and awards

- 12-16 The authorised chain of command for the nomination and recommendation of honours for actions involving HMS *Repulse* at the time of Davies's action was as follows:
- Commanding Officer HMS *Repulse* (Captain Tennant) as the initial nominator would make his submission, on Form 58 to Commander Force Z

19 Arthur J. Marder, *Old friends and new enemies: the Royal Navy and the Imperial Japanese Navy strategic illusions, 1936–1941*, Clarendon Press, Oxford, 1981, p. 488.

20 *Supplement to the London Gazette*, no. 38214, 26 February, 1948, p. 1237.

21 George Hermon Gill, *Royal Australian Navy 1942–1945*, vol. 2, *Australia in the War 1939–1945*, series 2, Navy, Australian War Memorial, Canberra, 1968, p. 482.

22 'Intelligence — reports, enemy plans & preparation & situation reports'. Extract from files of G-2 WD Intelligence Supreme Commander of the Allied Powers, NAA: AWM54 423/6/30.

23 Lieutenant OC Hayes (as he titled himself in a personal letter to Davies's mother) was Assistant Navigator and the officer responsible for training Midshipman Davies in *Repulse* at the time of the sinking. He would survive the sinking and later become Vice Admiral Sir John Hayes KCB OBE.

24 Letter, Lieutenant OC Hayes to Mrs Davies, 5 January 1942, copy provided to the Tribunal by the Davies family.

25 Letter, Captain Tennant to Mrs Davies, 10 January 1942, copy provided to the Tribunal by the Davies family.

26 Martin Middlebrook & Patrick Mahoney, *Battleship — the loss of the Prince of Wales and the Repulse*, Allan Lane, London, 1977, p. 241.

27 Oral submission by Rear Admiral Griffiths, Public Hearing Sydney, 9 February 2012.

(Admiral Phillips, who had also on 8 December become Commander-in-Chief Eastern Fleet).²⁸

- b. Commander Force Z would then forward supported nominations to Commander-in-Chief Eastern Fleet. In the circumstances, Phillips was lost in the action and Vice Admiral Layton, who had no command responsibility at the time, subsequently became Commander-in-Chief Eastern Fleet. In these circumstances, Layton therefore became second in the chain of command, after Tennant.
- c. If nominations were supported by Layton, they would then be forwarded to the Secretary of the British Admiralty for consideration by the Admiralty Honours and Awards Committee.
- d. If endorsed by the Admiralty Honours and Awards Committee, the level of honour would be decided and the recommendation would be forwarded to the King for approval.

12-17 The nomination for an honour for Davies was initially raised by Captain Tennant in his letter of recommendations submitted to the Secretary of the Admiralty dated 18 January 1942. In that letter, Tennant said that:

I have to request that you will place before their Lordships the names of the following officers and men, of whom several did not survive, for outstanding gallantry, zeal and devotion to duty during Repulse's last action on Dec. 10 1941. *Their names are placed in order of merit* [emphasis added]:-

1. Gunner John Burley Page, RN, Promoted Lieutenant. As the ship was about to sink, Mr Page found ordinary seaman J. Macdonald ... wounded and without (a) life-saving belt. Mr Page took off his own belt and put it on Macdonald — Mr Page was not picked up ... I submit that a high posthumous award may be conferred on Mr Page.
2. Surgeon Lieutenant S. G. Hamilton, RNVR ... outstanding devotion to duty ... when in action in tending to the wounded and continuing to do so for some nine hours in the destroyer 'Electra' after he was picked up.
3. Midshipman R.I. Davies, RAN, (missing) this very gallant young officer was last seen firing an Oerlikon gun at Enemy aircraft when he and the gun mounting were slowly submerging — Prior to this he had shown himself to be outstanding as O.O.Q [Officer of Quarters] of close range guns.²⁹

12-18 Tennant then listed the remaining 12 nominations in descending order of merit. Of the 15 names, only Davies is specifically cited for his actions in engaging directly in combat with the Japanese attacking aircraft. Nevertheless, Tennant did not elevate Davies from third on his order of merit. The other nominees were recommended for actions such as self-sacrifice, assistance to the wounded, efficiency in damage control, ammunition resupply and calmness under trying circumstances.

²⁸ Form 58 was a Royal Navy form used for honours nominations. The nominees' personal details and a citation were completed. The nominator would also indicate whether the honour intended should be a decoration (actual award not specified) or Mention in Despatches.

²⁹ Honours and awards: Loss of *Prince of Wales* and *Repulse* — awards to personnel, TNA: ADM 1/12315 (H & A 58/1942).

Honours and awards made for the action

- 12-19 In the case of the action involving Davies, a total of 13 MID (Posthumous) and 11 MID were awarded.³⁰ Of these, HMS *Repulse*'s ships' company were awarded 15 honours, of which 8 were MID (Posthumous) and 7 were MID. HMS *Prince of Wales*' ships' company were awarded 9 honours, of which 5 were MID (Posthumous) and 4 were MID.

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

Arguments put forward in submissions for the award

- 12-20 Several submitters made claims supporting the award of the Victoria Cross (VC) or other recognition for Midshipman Davies as follows:
- Mr Mike Carlton submitted that Davies kept firing as *Repulse* took him down and that 'this conduct was confirmed by one of the other Australian midshipmen, Guy Griffiths' (Submission 92).
 - Two submissions compared Davies's actions to that of 'Jack' Cornwell, VC, RN, at the battle of Jutland, where 'though in fact a British strategic victory, [it] was perceived by many at the time as a tactical defeat' (Submissions 86 and 92).
 - Mr John Bradford cited Marder's book *Old friends and new enemies* that claimed that a high-ranking naval officer decided that 'in a disaster of such magnitude, no recommendations for rewards can be considered'. The view was put that whether this was true or not, the Admiralty's decision to grant only MID awards for the action was disgraceful (Submission 86).
 - Mr Bradford, while not supporting Davies's elevation to the level of the VC, recommended increased recognition by awarding Davies the Star of Gallantry (Submission 86).
 - Mr David Amos submitted that there was much that could support additional recognition for Davies. He said that Davies had refused the order to 'Abandon ship' and instead continued firing at the attacking Japanese torpedo bombers while throwing empty ammunition cases overboard between bursts to help those in the water to stay afloat. Davies remained at his post while the ship went down, continuing to fire until the end. Davies's conduct was of someone thinking very clearly and selflessly at the time, not a random spur of the moment decision, but one that was taken with time to contemplate. He was aware that by staying at his post he would not survive (Submission 102).
 - Mr Amos submitted personal letters from Captain Tennant and Lieutenant Hayes to Davies's mother, in which both officers confirmed Davies's action, as noted previously at paragraph 12-15. In his letter, Tennant said that he was 'going to recommend [Davies] for some award.' Hayes said that he 'did not actually see [Davies] in the action but ... heard of his gallantry immediately and frequently from many sources afterwards. He kept that gun firing until the very, very end. When the order was given to abandon ship, [he] stuck to his place

³⁰ *Fourth Supplement to the London Gazette*, no. 35743, 13 October 1942, p. 4449.

of duty, telling those who got in his way on their passage over the side what he thought of them, and continued to fire at the enemy. He died giving of his utmost'. Hayes concluded his letter by noting that he would 'not be in the least surprised if his [Davies] gallantry is not recognised officially by the Admiralty' (Submission 102 and oral submission Canberra 2 December 2011).

Arguments put forward in submissions against the award

- 12-21 Three submitters did not support the award of the VC or other recognition to Midshipman Davies. These are summarised as follows:
- Rear Admiral Griffiths said that although he did not personally see Davies's action, he did not want to prevent consideration of Davies for additional recognition. But he submitted that 'any change of [the] award of MID (Posthumous) to Davies ... could not be made in isolation'. Griffiths argued that upgrading or changing the level of honour already awarded could not be done without also examining the other posthumous MIDs that were awarded for the action. Griffiths did not consider there was 'any good reason' to change the level of the honour because Tennant had 'at the time made out his list from first-hand knowledge of the situation ... [and that it] was in [Tennant's] considered opinion, the situation of the sinking'. Griffiths further argued that the award system needed to be preserved, and that would not be best achieved 'by overriding decisions that were taken 70 years ago'. He said it was 'not possible to revisit battle situations, so many years later; if at all' (Submission 174 and oral submission Sydney 9 February 2012).
 - Mr Graham Wilson submitted that since a survivor, Ted Matthews, had recalled 'I didn't hear the "Abandon ship" order'³¹, it was also possible that Davies did not hear the order and as such, that in doing his job, did not realise that he was fighting on to the death. Mr Wilson also argued that the honour already awarded to Davies could not be altered without examination of the other members of the ship's company who were also awarded an honour (Submission 99).
 - Mr Richard Pelvin submitted that Davies was third in order of merit of the 15 nominations put forward by Tennant. Mr Pelvin, as did Mr Wilson and Rear Admiral Griffiths, also argued that no consideration could be given to Davies without equal consideration of the two nominees above Davies (Page and Hamilton) (Submission 124).

Tribunal review of the award's process

- 12-22 In considering the case for a possible upgrade of the MID (Posthumous) to the VC for Midshipman Davies, the Tribunal first conducted a process review in accordance with the Tribunal's approach as described in paragraph 8-44 of the Report.
- 12-23 The authorised process at the time was for nominations for honours to be made on Form 58. As outlined earlier at paragraph 12-16, the ship's Captain [Tennant]

31 Alan Matthews, 'The sinking of HMS *Prince of Wales* and HMS *Repulse*', Force Z Survivors Association, www.forcez-survivors.org.uk, viewed 5 July 2012.

was required to initiate the process by passing his nominations to Commander-in-Chief Eastern Fleet [Layton]. Supported nominations would then be passed to the Secretary of the Admiralty in the United Kingdom for final consideration by the Admiralty Honours and Awards Committee, whose recommendations, including a decision on the level of honour, would be sent to the King for approval.

12-24 At the time of Davies's action, he was serving as a member of the RAN, in an RN ship, under RN command, as part of the Eastern Fleet. Nominations for honours would therefore proceed through the RN chain, and not through the Australian chain. It was put to the Tribunal that there were questions over the possibility that Admiral Layton may have not been supportive of honours nominations in circumstances where a 'disaster of such magnitude' may have occurred, implying that the potential for an injustice existed. In its research, the Tribunal confirmed that the authorised process for considering the nomination of Davies was not followed correctly.

12-25 The command arrangements prevailing at the time of Davies's action were summed up by Griffiths as being 'virtually impossible to understand. The command issues at the time were clouded and not at all straightforward'.³² In Marder's book *Old friends and new enemies*, it is said that the correct procedures were not followed because:

Tennant said that he could not recommend anyone for a decoration because every officer and man 'carried out his duties to the utmost', and possibly the greatest cases of gallantry were performed by those who did not survive.

The powers that be announced that 'in a disaster of such magnitude no recommendations for rewards can be considered' nor were they.³³

12-26 In his oral submission, citing Marder's claim, Griffiths said that it was his understanding that 'the powers that be' was Vice Admiral Layton and that despite the fact that Layton may not have wanted any awards to be made at all, Captain Tennant submitted recommendations on his return to the United Kingdom.³⁴ In other words, the view as described by Marder and accepted by others was that Captain Tennant had to step outside the authorised process and bypass Vice Admiral Layton because Tennant believed Layton would not support any recommendations for honours in the disaster that resulted in the loss of two capital ships.

12-27 In its research, the Tribunal has found that this proposition does not appear to be supported by the evidence as it relates to Davies and the other *Repulse* nominees. While the Tribunal does not know whether Layton held those views personally or made them known within his command jurisdiction, what is clear is that Captain Tennant submitted his Report of the Action to Layton on or about 13 December 1941.³⁵ That report did not include any recommendations for honours.

12-28 By 17 December 1941, one week after the sinking, Captain Tennant had left the Eastern Fleet and returned to the United Kingdom. On that same day, Layton, from his Headquarters in Singapore, forwarded a covering letter to the Secretary of

32 Oral submission by Rear Admiral Guy Griffiths, Public Hearing Sydney, 9 February 2012.

33 Marder, *Old friends and new enemies*, p. 483.

34 Oral submission by Rear Admiral Guy Griffiths, Public Hearing Sydney, 9 February 2012.

35 This date is sourced from Captain Tennant's letter of recommendation to the Secretary of the Admiralty, TNA: ADM 1/12315.

the Admiralty, to which were attached the Reports of the Action on the loss of HM Ships *Prince of Wales* and *Repulse*. In that letter, Layton says that:

as many of the officers concerned are now returning to the United Kingdom ... I feel unable, as I would wish to have done, to bring to the special notice of Their Lordships to (sic) cases of individual good service, of which there were many. I will submit my further observations at a later stage, but in the meantime I would ask Their Lordships to obtain from Captain W.G. Tennant, R.N ... recommendations for the recognition of those who were specially deserving.³⁶

- 12-29 These words contradict the notion that Layton was obstructing nominations for honours; instead his actions seem actually to initiate the process. A month later, on 18 January 1942 while on leave in the UK, Tennant, who had not to this point contemplated recommending 'any particular officer or man for [a] decoration' then submitted a handwritten letter directly to the Secretary of the Admiralty.³⁷ He requested that the 'letter may be considered as an appendix to [the] report of the action' already submitted.³⁸ This would seem to indicate that Tennant was responding to a request from the Admiralty to submit nominations for the action, based on Layton's advice in his 17 December covering letter. In Tennant's letter, he summarises the actions of those he nominated as being of outstanding gallantry, zeal and devotion to duty.³⁹
- 12-30 Tennant's letter submitted to the Admiralty contained a list of recommendations, in order of merit, of those crew members of HMS *Repulse* that he considered should be recognised for awards. In this context, Tennant, specifically in referring to the first name on his list (Page), recommended him for 'a high posthumous award'. Tennant followed this up in February 1942 by drawing the Admiralty's attention to Page by referring them to a British press report that quoted from Tennant's personal letter to Page's widow.⁴⁰ In forwarding this to the Admiralty, Tennant confirmed that the report content was accurate. There is no evidence that Tennant lobbied for any of the other nominees.
- 12-31 Having received the list of nominations from Captain Tennant in January 1942, the process was then delayed. The Head of Admiralty Honours and Awards Committee, Admiral Sir Hugh Binney, RN, wanted to ensure that all nominations from the action were submitted and that Layton, who had indicated in his December covering letter that he 'would submit ... further observations at a later stage', had the opportunity to do so. On 13 June 1942, the Admiralty asked Layton, who was by then Commander-in-Chief Ceylon,⁴¹ to forward any additional nominations.⁴² In reply, Layton's headquarters reaffirmed the original 17 December advice saying that 'it was impracticable [at the time] to collect recommendations

36 Letter, Vice Admiral G Layton to Secretary of the Admiralty, 17 December 1941, TNA: ADM 1/12315, M0251/42.

37 *Supplement to the London Gazette*, no. 38214, 26 February 1948, p. 1242.

38 Letter, Captain William Tennant to Secretary of the Admiralty, 18 January 1942, TNA: Public Record Office ADM 1/12315 (H & A 58/1942).

39 Letter, Captain William Tennant to Secretary of the Admiralty, 18 January 1942, TNA: Public Record Office ADM 1/12315 (H & A 58/1942).

40 Letter, Naval Secretary to Vice Admiral Binney, 17 February 1942, TNA: ADM 1/12315.

41 After the fall of Singapore, the Eastern Fleet relocated to Java. As the Japanese advanced beyond Singapore, the Fleet then withdrew to Ceylon (now Sri Lanka). In March 1942, Layton became Commander-in-Chief Ceylon, having relinquished command of the Eastern Fleet to Admiral Somerville. The Eastern Fleet was then relocated to a British base in the Maldives. Layton remained as Commander-in-Chief Ceylon until the end of the war.

42 Message, Head H&A Whitehall 1947B/13th June, 13 June 1942, TNA: ADM 1/12315.

at Singapore as most of the surviving Officers ... were dispersed'.⁴³ Following this advice from Layton, on 26 August 1942 the Admiralty then wrote to Lieutenant Commander Arthur Skipwith, RN, the senior surviving officer from *Prince of Wales*, asking him to forward particulars of individual gallantry and devotion to duty that may have come to his notice during the action involving *Prince of Wales*.⁴⁴ In response, on 31 August 1942, Skipwith, having only previously submitted technical Reports of the Action, wrote directly to the Admiralty, submitting nine names for consideration — not in order of merit as Tennant had done, but in alphabetical order.⁴⁵

- 12-32 On 22 September 1942, the Admiralty Honours and Awards Committee submitted their recommendations for honours from the action for the King's approval. All nominations were approved at the level recommended by the committee and were published in the *Supplement to the London Gazette* No. 35743 dated 13 October 1942. Despite Tennant's recommendation for Gunner (Lieutenant) Page to receive a 'high posthumous honour', he was awarded an MID (Posthumous). There is no evidence to suggest that Tennant objected to this outcome.
- 12-33 The Tribunal concluded that Layton did not review the nominations. Layton had removed himself from the process, recognising that he was not in a position to deal fairly or expeditiously with the nominations. Despite the claims that Layton was personally against recognition 'in disasters of such magnitude', the Tribunal has concluded through its research that Layton actually ensured that nominations would be submitted and fairly considered. There is no evidence that recommendations were not appropriately considered in accordance with Admiralty processes.
- 12-34 The proposition put to the Tribunal by Mr Bradford (that the Admiralty elected to grant only MID awards for the action, describing this as 'a disgraceful decision') is not supported by any evidence before the Tribunal. On the contrary, the Tribunal found that considerable care was taken by Tennant to ensure that appropriate recognition was given to his nominations, even to the extent of seeking to influence the Admiralty Committee with his order of merit, his strong recommendation for a 'high award' to Gunner (Lieutenant) Page, and his subsequent lobbying of the Admiralty. Since the promulgation of the honours in 1942, there is no evidence that any review due to dissatisfaction or injustice was ever sought through the end of war list process. It is also significant to note that neither Tennant, Hayes nor Griffiths, all of whom subsequently completed distinguished naval careers⁴⁶ and had the opportunity to correct any perceived injustices, ever expressed dissatisfaction with any of the level four honours that resulted from the action.
- 12-35 Mr Bradford proposed that Davies be awarded the Star of Gallantry (SG), a level two honour. Referring to the Tribunal's position on the 'posthumous gap' as outlined in paragraphs 8-18 to 8-20 of the Report, such a proposition cannot be sustained.

43 Message, C-in-C Ceylon 0503Z/18th June, 19 June 1942, TNA: ADM 1/12315.

44 Letter, Admiralty to Lieutenant Commander Skipwith, 26 August 1942, TNA: ADM 1/12315.

45 Letter, Lieutenant Commander Skipwith to Secretary of the Admiralty, 31 August 1942, TNA: ADM 1/12315.

46 Tennant retired from the Royal Navy in 1949 with the rank of Admiral. Hayes retired from the navy in 1968 with the rank of Vice Admiral. Griffiths retired from the RAN in 1980 with the rank of Rear Admiral.

Tribunal review of the merits of the case

- 12-36 The Tribunal also considered, from all the material available to it, the merits of the case for elevating the recognition of Davies for his actions in *Repulse*. This merits review was carried out in accordance with the Tribunal's approach as described in paragraph 8-46 of the Report.
- 12-37 In examining the actions of Captain Tennant, the Tribunal found that on the basis of the evidence available, his judgements and recommendations were correct and of themselves not unjust, misleading or prejudicial. He wrote to Davies's mother saying that he was 'going to recommend [Davies] for some award', which he did. The words Tennant used to describe Davies's action were not indicative of those one would expect for the only other posthumous honour available at the time, the VC.
- 12-38 Mr Amos submitted that Davies's conduct was of someone thinking very clearly and selflessly at the time, not a random spur-of-the-moment decision, but one that was taken with time to contemplate. Davies was aware that by staying at his post he would not survive, and therefore should be considered for a VC. The Tribunal has no reason to disagree with this proposition. Indeed, Griffiths confirmed Davies's selfless actions and Tennant also captured that notion in his nomination. But it cannot be reasonably concluded that Tennant had a VC in mind when he nominated Davies.
- 12-39 In support of a proposition to have Davies recognised with a VC, one submitter (Carlton) put to the Tribunal that Davies's conduct was 'confirmed by one of the other Australian midshipmen, Guy Griffiths'. While it is correct that Griffiths could confirm the action, in his oral submission to the Tribunal he said that he was not an eyewitness to Davies's action. The Tribunal was unable to identify any specific eyewitnesses who might introduce a version of events that was at variance to the events cited in Tennant's letter of recommendation, or contribute new evidence.
- 12-40 Carlton also submitted that Davies's actions were superior in merit when compared to those of 'Jack' Cornwell, VC, RN, at the Battle of Jutland. While this is a subjective proposition, it is not possible to come to a sustainable conclusion on the basis of comparisons between individual conduct in military actions. As discussed at paragraphs 8-21 to 8-25 of the Report, the Tribunal placed no weight on the use of comparisons to reassess the merits of this case.
- 12-41 In his submission to support his proposition that no change to Davies's MID (Posthumous) be contemplated, Mr Wilson speculated that, on the basis of a report of one survivor, it was possible that Davies did not hear the order to 'Abandon ship' and, as such, that in doing his job, did not realise that he was fighting on to the death. Amos countered this when he said that Davies had refused the order to 'Abandon ship' and instead continued firing at the attacking Japanese torpedo bombers. Amos's position was supported by Griffiths in his oral submission, concluding that Davies 'probably told his crew to abandon ship as they had been ordered to do so'. In his letter to Mrs Davies just three weeks after the action, Hayes said that 'when the order was given to Abandon Ship, [Davies] stuck to his place of duty, telling those who got in his way on their passage over the

side, what he thought of them'.⁴⁷ Tennant also confirmed in his after-action report 'that the broadcasting apparatus was still working throughout the ship with the exception of the compartments down below aft ... she only remained afloat about six or seven minutes after I gave the order for everyone to come on deck'.⁴⁸ The Tribunal placed considerable weight on all three survivors' interpretations, which confirm Davies's selflessness and gallantry, rather than Wilson's speculation.

12-42 Letters of condolence written to Midshipman Davies's mother by Captain Tennant and Lieutenant Hayes were new material that had not been previously cited in historical accounts. While they included new descriptions of Davies's action, these were not sufficiently compelling to prompt further investigation.

12-43 The Tribunal is satisfied that Tennant took full account of all actions when he decided to recommend the highest posthumous honour to Gunner (Lieutenant) Page. There is no evidence to sustain an alternative finding through a merits review that Davies's gallantry was inadequately recognised.

Tribunal conclusion

12-44 The Tribunal concluded that on both process and merits, Davies's case was properly considered at the time. The process and procedures were not followed precisely, but considering the circumstances, they were appropriate and fair. Midshipman Davies was appropriately honoured with an MID (Posthumous). A merits review was unable to sustain any alternative outcome.

Tribunal recommendation

12-45 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.

⁴⁷ Letter, Lieutenant OC Hayes to Mrs Davies, 5 January 1942, copy provided to the Tribunal by the Davies family.

⁴⁸ Report from Captain Tennant to C-in-C Eastern Fleet, 11 December 1941, published in the *Supplement to the London Gazette*, no. 38214, 26 February 1948, pp. 1239–1240.

CHAPTER THIRTEEN

LEADING COOK (OFFICERS) FRANCIS BASSETT EMMS

13-1 Francis Bassett Emms was born in Launceston, Tasmania, on 28 November 1909. He joined the RAN on 14 March 1928 for a 12-year engagement. He initially trained as an Ordinary Seaman at HMAS *Cerberus*, and on 14 March 1929 joined the heavy cruiser HMAS *Canberra*. He was promoted to Able Seaman on 14 January 1930 and later qualified as a gunnery rating. He was subsequently posted back to *Cerberus* on 24 July 1930. From January 1931 to 1936 Emms served in a number of ships including HMA Ships *Australia*, *Penguin*, *Waterhen*, *Vendetta*, *Brisbane* and *Sydney*.



Leading Cook (Officers)
Francis Bassett Emms

13-2 By 1936 Emms's eyesight was failing, so he had either to take up a shore posting or retrain for a different seagoing category. Wanting to stay at sea, he opted to transfer to the Supply Branch and was trained, then re-rated as a Cook (Officers) on 9 February 1937. He was promoted to Acting Leading Cook (Officers) on 1 April 1938. During this period he served in HMA Ships *Stuart*, *Swan* and *Canberra*. Emms's last posting was officially HMAS *Melville*, the naval depot in Darwin. On 19 February 1942 he was aboard HMAS *Kara Kara*, a boom gate vessel, manning one of its machine guns throughout the first Japanese air attack on Darwin. Emms sustained fatal wounds in that attack and died before reaching the hospital ship, HMAS *Manunda*. For his actions during the attack, Emms was awarded a Mention in Despatches (MID) (Posthumous). It is this action that is the subject of this inquiry.

Recognition for service

13-3 For his naval service, Leading Cook (O) Francis Bassett Emms was entitled to the following Defence honours and awards:

- 1939–1945 Star
- Pacific Star
- Defence Medal
- War Medal 1939–1945
- Australia Service Medal 1939–1945
- Mention in Despatches (Posthumous).

What has led to the review?

13-4 While the family of Leading Cook (O) Emms strongly support his consideration, they had not previously sought government or any other review of his recognition. Mrs Amanda Rawlin, representing the family, told the Tribunal that Emms's nomination for review 'came as a complete surprise' and the family was extremely

proud of what he had done. She mentioned in her submission that an author, Mr John Bradford, was 'pushing for more recognition'.¹

- 13-5 Emms's action was described by the Member for Braddon, Mr Sid Sidebottom, MP, in the House of Representatives in 2001.² In 2011, Sidebottom repeated in Parliament his comments about Emms.³ In neither instance did he make a specific case to award a Victoria Cross (VC) to Emms.
- 13-6 There has never been a campaign to seek further recognition for Emms. Nevertheless, Emms was formally nominated for review in the Terms of Reference of 2011, after being proposed by the Chief of the Defence Force in a ministerial submission to the government.⁴ Defence did not provide any material to the Tribunal to suggest that Emms's recognition was inadequate, and did not provide any of the submissions that they claimed had led to his name being included in the Terms of Reference.

Submissions

- 13-7 The Tribunal received seven written submissions and heard six oral submissions regarding Leading Cook (O) Emms.

Written submissions

- a. Submission 86 — Mr John Bradford (for)
- b. Submission 89 — Nowra Greenwell Point RSL Sub-Branch (no position taken)
- c. Submission 99 — Mr Graham Wilson (against)
- d. Submission 107 — Mrs Amanda Rawlin (for)
- e. Submission 121 — Senator Guy Barnett (for)
- f. Submission 123 — Mr Peter Cooke-Russell, National Vice President, The Naval Association of Australian (for)
- g. Submission 124 — Mr Richard Pelvin (against).

Oral submissions

- a. Mr Graham Wilson — Public Hearing Canberra — 1 December 2011 (against)
- b. Mr Richard Pelvin — Public Hearing Canberra — 2 December 2011 (against)
- c. Mr Guy Barnett (former Senator) — Public Hearing Launceston — 16 December 2011 (for)
- d. The Hon. Sid Sidebottom, MP — Public Hearing Launceston — 16 December 2011 (for)
- e. Mrs Amanda Rawlin — Public Hearing Sydney — 9 February 2012 (for)
- f. Mr John Bradford — Public Hearing Adelaide — 14 February 2012 (for).

1 Oral submission by Mrs Amanda Rawlin (Emms's granddaughter) Public Hearing Sydney — 9 February 2012.

2 CPD, H of R, 27 March 2001, pp. 25781–25782 (Sid Sidebottom).

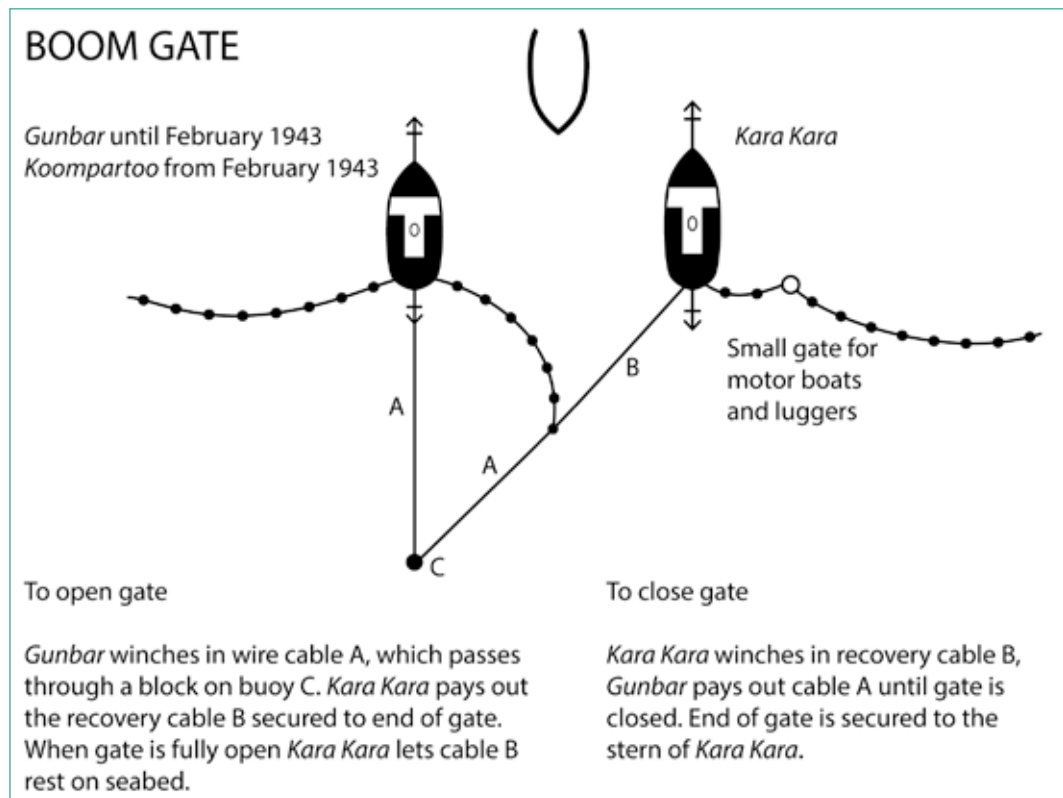
3 CPD, H of R, 31 October 2011, pp. 12116–12119 (Sid Sidebottom).

4 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.

Background

The Boom Defence

13-8 Prior to the outbreak of the Second World War, Darwin was identified as a possible location to provide a base for supplies of fuel, water and stores to the British Far East Fleet. Surveys revealed that Darwin could provide a fleet anchorage suitable for 28 ships and 17 small craft. In 1938, the British Admiralty designed an anti-submarine boom net defence for Darwin Harbour, to be positioned between Dudley Point and West Point (some six kilometres). Between January 1941 and January 1942, three boom working vessels, HMA Ships *Kookaburra*, *Koala* and *Kangari* were in place, laying the anchorage and maintaining the boom net. By 1942, the boom service had also been allocated five boom defence vessels to patrol and defend the boom net, and undertake air/sea rescue duties. These vessels consisted of former motor boats and motor yachts that were refitted, armed and put into service as HMA Ships *Kuru*, *Kiara*, *Vigilant*, *Moruya* and *Larrakia*.



Source: [www.navy.gov.au/Fixed Naval Defences in Darwin Harbour_1939_-_1945](http://www.navy.gov.au/Fixed_Naval_Defences_in_Darwin_Harbour_1939_-_1945), viewed 13 August 2012.

Diagram of the boom gate system

13-9 To enable ships to enter and leave harbour, two permanently moored gate vessels operated a gate through the net, within the shipping channel. HMAS *Kara Kara* and HMAS *Koompartoo*, two former Sydney ferries, were refitted⁵ and commissioned for this purpose. *Kara Kara* arrived in Darwin in November 1941

⁵ Armaments fitted to HMAS *Kara Kara* were: 1 × 12 pounder cwt QF, 2 × .303 inch Vickers machine guns and 2 × .30 inch Marlin machine guns.

and while *Koompartoo* was being converted, *Kookaburra* and *Gunbar*, an auxiliary minesweeper, alternated as gate vessels. *Koompartoo* eventually arrived in Darwin in February 1943. *Kara Kara* and *Kookaburra* were fixed in the gate in January 1942 as the western and eastern boom gate vessels, respectively. The gate became fully operational on 14 February 1942.⁶



Source: [www.navy.gov.au/Fixed Naval Defences in Darwin Harbour 1939 - 1945](http://www.navy.gov.au/Fixed_Naval_Defences_in_Darwin_Harbour_1939_-_1945), viewed 13 August 2012.

HMAS *Kara Kara*

- 13-10 In February 1942, RAN command arrangements in the Darwin area were centred on the shore establishment HMAS *Melville*. From there, the Naval Officer-in-Charge (NOIC) Darwin, Captain EP Thomas, RN,⁷ commanded all RAN operations and personnel assigned to the Darwin area. Reporting to Thomas was Commanding Officer of the Boom Defence, Lieutenant Commander AE Fowler, RAN.⁸ Fowler commanded all RAN assets and personnel assigned to the Boom Defence, including HMAS *Kara Kara*, which was commanded by Lieutenant Edmund Catchpole, Royal Australian Naval Reserve (Seagoing) RANR(S).

The attack on Darwin Harbour

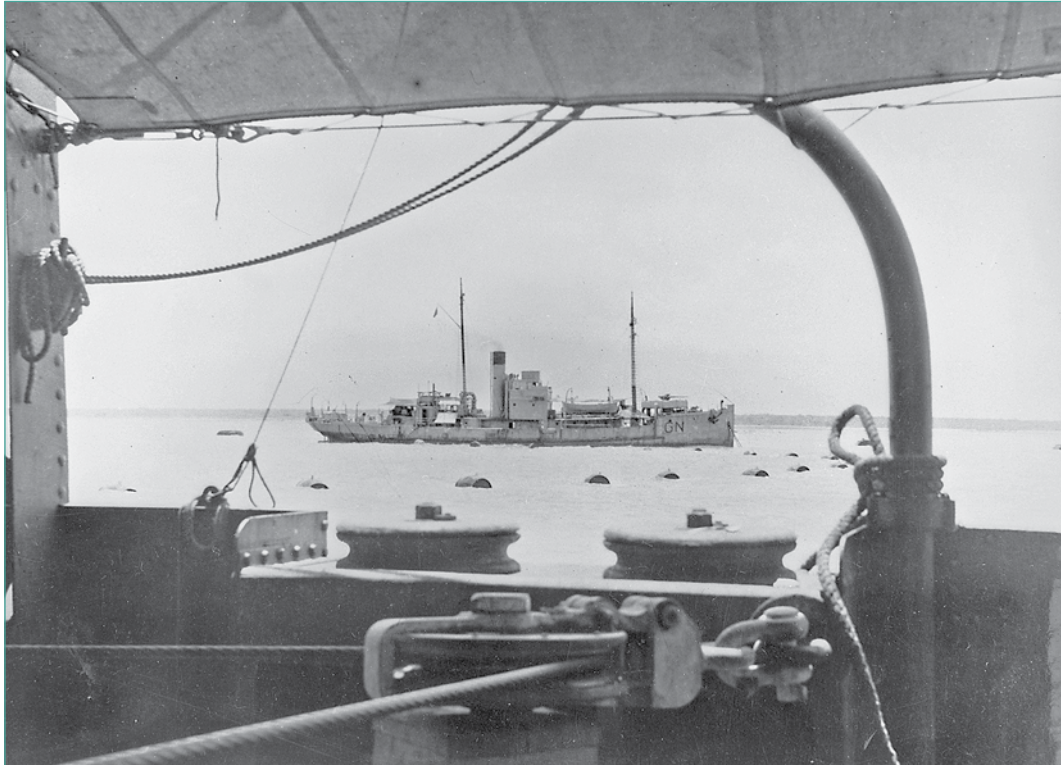
- 13-11 By early 1942, the Japanese had advanced into the Pacific and through South-East Asia. Rabaul (New Guinea) had been captured, the island of Ambon (Dutch East Indies) had surrendered, and air attacks had commenced on Port Moresby. The Japanese had established a significant air combat capability, recently proven in the attack on Pearl Harbor and the sinking of the British capital ships HMS *Repulse* and *Prince of Wales*. By 15 February, when Singapore fell, there was a concentration of shipping in Darwin harbour, which was protected from submarine attack by the boom defence system. Among the naval vessels in harbour was the hospital ship HMAS *Manunda*.
- 13-12 On 19 February 1942, the first Japanese air attack on Australia came in two waves. The first wave was carried out by aircraft from a naval force comprising the carriers *Akagi*, *Kaga*, *Soryu* and *Hiryu*. The second wave, later in the day, was carried out by land-based air units. The carrier aircraft launched in the first wave consisted of 36 A6Ms (Zero Fighters), 81 B5Ns ('Kate' torpedo bombers) and 72 D3As ('Val' dive bombers). Their targets were the Allied warships and merchant vessels in Darwin's harbour and the harbour facilities.⁹ The first wave of fighter

6 Lieutenant Pat Forster, RANVR, *Fixed naval defences in Darwin Harbour 1939-1945*, [www.navy.gov.au/Fixed Naval Defences in Darwin Harbour 1939 - 1945](http://www.navy.gov.au/Fixed_Naval_Defences_in_Darwin_Harbour_1939_-_1945), viewed 30 March 2011.

7 Captain EP Thomas, RN, was NOIC Darwin from 1 January 1941 until 21 February 1942. His successor as NOIC Darwin was Commodore CJ Pope, RAN.

8 In October 1939 Fowler was reassigned from Chief of Staff at Darwin's Fortress Combined Operation Headquarters and appointed Boom Defence Officer, Darwin.

9 Hiromi Tanaka, 'The Japanese Navy's operations against Australia in the Second World War, with a commentary on Japanese sources', *Journal of the Australian War Memorial*, no. 30, April 1997, www.awm.gov.au/journal/j30/tanaka.asp viewed 14 September 2012. Christopher Shores, Brian Cull & Yasuho Izawa, *Bloody shambles: the first comprehensive account of air operations over South-East Asia — December 1941 – April 1942*, vol. 1, Grub Street, London, 1992, pp. 175-182.



Source: [www.navy.gov.au/Fixed Naval Defences in Darwin Harbour_1939_-_1945](http://www.navy.gov.au/Fixed_Naval_Defences_in_Darwin_Harbour_1939_-_1945), viewed 13 August 2012.

HMAS *Gunbar* from the deck of HMAS *Kara Kara*

aircraft arrived in a surprise attack, engaging HMAS *Gunbar* as it passed through the boom gate¹⁰ within metres of *Kara Kara*. The attacks on the vessels at the boom defence gate were concentrated and relatively prolonged. *Gunbar*'s Acting CO, Lieutenant DH Davies, RANR,¹¹ reported that:

at 0957 nine Fighter Aircraft attacked, giving in all 18 separate attacks from ahead, astern, Port, Starboard and the 4 Quarters. The attackers used a mixture of Armour Piercing, Tracer and common ammunition of about .303 calibre ... At 1040 the attack finished.¹²

Davies said that *Gunbar* was rendered defenceless, after its only weapon, a Lewis gun, was destroyed in the first attacking run. Both gate ships, *Kara Kara* and *Kookaburra*, were attacked simultaneously along with *Gunbar*, as were the boom defence vessels and other craft in the vicinity of the boom.¹³ Some were engaged by dive bombers and heavy fire from machine guns.¹⁴ Fowler said that *Kara Kara* was under continuous machine-gun attack by Japanese aircraft. On board, Leading Cook (O) Emms defended the ship, and although seriously wounded, he

¹⁰ George Hermon Gill, *Royal Australian Navy 1942–1945*, vol. 2, *Australia in the war of 1939–1945*, Australian War Memorial, Canberra, 1968, pp. 591–595.

¹¹ Lieutenant DH Davies, RANR, was Acting Captain of HMAS *Gunbar* after her CO, Temporary Lieutenant NM Muzzell, RANR(S), was wounded during the air attack on the ship.

¹² Commander John Peter Tonkin, RAN, 'Report of air attack on 19 February 1942', 17 March 1942, TNA: ADM 1/12390.

¹³ Gill, *Royal Australian Navy 1942–1945*, p. 592.

¹⁴ Lieutenant Commander Alexander Earl Fowler, RAN, 'Boom Depot Report', no. 037/42, 24 February 1942, TNA: ADM 1/12390.

continued to return fire from his machine gun throughout the attack. In Fowler's later recommendation for recognition he said of Emms's actions:

For courage and devotion to duty in action. Whilst seriously wounded he continued to fire his machine gun on HMAS *Kara Kara* during a continuous machine gun attack by enemy aircraft, thereby probably saving the ship and many of the ships' company. He eventually succumbed to his injuries.¹⁵

- 13-13 By 1100, the attacking aircraft of the first wave had departed and the all clear was sounded. In the harbour and town, everything had been temporarily reduced to chaos by the sudden attack.¹⁶ By the end of that day, some 252 Allied service personnel and civilians had been killed in two separate air raids involving over 260 Japanese aircraft.¹⁷ Four RAN servicemen from the Boom Defence were killed.¹⁸ One of those, Leading Cook (O) Emms, suffered fatal wounds and died before being carried on board HMAS *Manunda* by the Coxswain of *Kara Kara*.¹⁹ He was later buried at sea with naval honours, together with the other Boom Defence personnel killed in the attack.²⁰

Eyewitness and other accounts of Emms's actions

- 13-14 Few witness records and no direct eyewitness accounts have emerged of Emms's actions. The only primary sources that describe his conduct are Fowler's recommendation for honours sent to the NOIC Darwin (Commodore CJ Pope, RAN),²¹ personal letters of condolence written to Emms's widow by Fowler, and an unsigned and undated letter fragment from a person who appears to be a friend who had joined the Navy with Emms. In this letter, it was said that Emms 'deserved the VC ... he was hit in the stomach but carried on until it was all over ... he never complained ...'.²² Fowler said of Emms that he was:

killed in action under the most gallant circumstances. He was manning a machine gun, and was constantly attacked by waves of diving aircraft, although seriously wounded early in the action he continued to fight his gun till the enemy was finally beaten off. He then collapsed and died shortly afterwards. He has been a shining example of the courage that must be shown by all if we are to defeat this determined enemy.²³

- 13-15 Media accounts in which Emms was named were brief. The earliest appeared in Hobart's *The Mercury* on 11 March 1942, simply advising that Emms was killed in action. Later reports then appeared on 2 and 3 September 1942, after the award of his MID (Posthumous) was gazetted. These appear to be based on a media release and information sourced from Emms's citation.

15 Fowler, 'Boom Depot Report'.

16 Alexander Earle Fowler, Letter, Lieutenant Commander Fowler to Emms's widow, 16 March 1942.

17 'Bombing of Darwin 14 February 1942 – 12 November 1943', Australian War Memorial, www.awm.gov.au/units/event_59.asp, viewed 25 June 2012.

18 RAN personnel killed included in *Kara Kara*: Leading Cook (O) FB Emms, PO F Moore; in *Gunbar*: OD HJ Shepherd; in *Kangaroo*: Cook NR Moore. Gill, *Royal Australian Navy 1942–1945*, p. 594.

19 'Message from DNO NT to ACNB', National Archives of Australia: MP692/1, 349/52/422.

20 AE Fowler, Letter, Lieutenant Commander Fowler to Emms's widow.

21 Commodore Cuthbert John Pope, RAN, assumed command as NOIC Darwin on 23 February 1942.

22 Unknown author, letter fragment to Emms's widow, unsigned and undated, Submission 107 — Mrs Rawlin.

23 Letter, Lieutenant Commander Fowler to Emms's widow.

Chain of command for honours and awards

- 13-16 The authorised chain of command for the nomination and recommendation of honours for actions involving HMAS *Kara Kara* at the time of Emms's action, was as follows:
- a. The CO of HMAS *Kara Kara* (Lieutenant Catchpole, RANR) would make a submission to Lieutenant Commander Fowler, RAN — Boom Defence Officer, Darwin.²⁴
 - b. Lieutenant Commander Fowler would forward recommendations to NOIC Darwin who would then forward supported recommendations to the Australian Commonwealth Naval Board (ACNB) for consideration.
 - c. If recommendations were supported, they would then be forwarded by the Secretary to the Australian Department of the Navy to the Secretary of the British Admiralty for consideration by the Admiralty Honours and Awards Committee.
 - d. If endorsed by the Admiralty Honours and Awards Committee, the level of honour would be decided and a recommendation made that sought the King's approval.

Honours and awards made for the action

- 13-17 In the case of the action involving Emms, 12 RAN personnel were recommended for recognition by both Pope and the ACNB. Of these, six honours were awarded: one Distinguished Service Medal (DSM) (Scott), one MID (Posthumous) (Emms) and four MIDs (Ericsson, Muzzell, Symonds and Tozer). The other six names recommended for recognition (Brennan, Garrioch, Sangwell, Whitton, Willder and Wright) were not included by the Admiralty in the list sent to the King for approval. They were never subsequently considered and did not receive an award.
- 13-18 Five of the six honours from the action were gazetted in the London Gazette on 1 September 1942.²⁵ Ericsson's MID was gazetted on 5 November 1942.

Other recognition for Emms

- 13-19 The Tribunal was advised that Leading Cook (O) Emms was commemorated by the Defence Housing Authority in 2003 when it opened the Vantage Point Defence Housing Development in Darwin. One of three towers in that development is named after him. A family member, Mrs Amanda Rawlin, stated in her oral submission that the family were also present at the opening ceremony.²⁶
- 13-20 The Tribunal is not aware if the RAN intends to recognise Emms in any other way.

²⁴ No record of Catchpole's nomination has been found.

²⁵ *Third Supplement to the London Gazette*, no. 35687, 28 August 1942, p. 3818.

²⁶ Oral submission by Mrs Amanda Rawlin, Public Hearing Sydney, 9 February 2012.

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

Arguments put forward in submissions for the award

- 13-21 Several submitters provided the following claims supporting the award of the VC to Leading Cook (O) Emms as follows:
- Submissions were made comparing Emms's actions as similar to those of Leading Seaman Jack Mantle, VC, RN, aboard HMS *Foylebank*, Midshipman Robert Davies, RAN, aboard HMS *Repulse* and Ordinary Seaman Edward Sheean, RAN, aboard HMAS *Armidale* (Submissions 86, 121 and 123, Rawlin oral submission Sydney 9 February 2012 and Barnett oral submission Launceston 16 December 2011).
 - One submission, while not supporting Emms's elevation to the level of the VC, recommended increased recognition by awarding Emms the Medal for Gallantry (Submission 86).
 - Two submitters put to the Tribunal that Lieutenant Commander Fowler's letter to Emms's widow used language that clearly describes his gallant conduct and example. Additionally, another letter had said that 'he deserved the VC'. This should be considered when reviewing Emms's case for increased recognition. (Submissions 107, 121, Rawlin oral submission Sydney 9 February 2012, Barnett oral submission Launceston 16 December 2011).
 - It was put to the Tribunal that Emms was part of an operation that was not a military success story for Australia or the British Empire, and therefore the authorities at the time 'hushed up [the circumstances] to calm potential panic'. It was suggested that this may partly explain why Emms 'has not been recognised previously'. (Submission 121 and Barnett oral submission Launceston 16 December 2011).

Arguments put forward in submissions against the award

- 13-22 Two submitters did not support the award of the VC to Leading Cook (O) Emms as summarised below:
- Mr Graham Wilson submitted that Emms manned one of four machine guns on *Kara Kara*, and Wilson strongly suspects that the other three machine guns were also manned. Further, the Lowe Commission report of more than 900 pages does not mention *Kara Kara*. Wilson argues that this fully supports the supposition that *Kara Kara* was never specifically targeted, the attack was a passing event during the raid and 'that Emms's fatal wounding, while tragic, was simply a matter of pure bad luck' (Submission 99).
 - Mr Richard Pelvin submitted that 'it is also instructive to consider the case of Able Seaman CD Scott. As with Emms, indeed simultaneously, Scott fought off air attacks on the boom defence vessel HMAS *Koala*'. Scott and Emms were both recommended by Fowler in the same report. The recommendations are almost identical. Scott survived the action and was awarded the DSM. Emms's action was likely considered worthy of an award higher than an MID, but not

a VC. However, his death in action left the MID (Posthumous) as the only alternative (Submission 124).

Tribunal review of the awards process

- 13-23 In considering the case for a possible award of the VC for Leading Cook (O) Emms, the Tribunal first conducted a process review as described in paragraph 8-44 of the Report.
- 13-24 At the time of Emms's action, he was serving as a member of the RAN, in an RAN ship, under RAN command, operating on the Australia Station. Nominations for honours would therefore proceed firstly through the Australian chain of command as outlined in paragraph 13-16, and subsequently be forwarded to the British Admiralty and the King for approval.
- 13-25 In examining the chain of command, it is not clear whether Lieutenant Catchpole (CO HMAS *Kara Kara*) made a verbal or a written submission when nominating Emms for recognition. No record could be found by the Tribunal of a written submission from either Catchpole or CO HMAS *Koala*, the vessel in which Able Seaman Scott was serving. In Lieutenant Commander Fowler's letter to Emms's widow on 28 February 1942, Fowler describes himself as Emms's 'Commanding Officer'. It is therefore possible that Fowler, as CO Boom Defence, was the initial recommending authority for honours. If so, Fowler would have been acting on advice provided by his subordinate commanders. This does not imply that Emms's recommendation was in any way prejudiced, but instead suggests that Fowler was in fact the formal originator of the recommendation.
- 13-26 The Tribunal traced Fowler's recommendation through the chain of command. It is apparent that the First Naval Member on the ACNB (and who was also the Chief of Naval Staff [Vice Admiral Sir Guy Royle, RN]) was in effect Commander-in-Chief of the Australia Station. However, unlike other examples of British Commanders-in-Chief lobbying for and directly recommending nominations for honours for their subordinates,²⁷ the ACNB did not seek to influence the Admiralty. The ACNB did not add anything or ask for any more information, such as clearly defining the precise nature and quality of each action, thus completing the requirements of Commonwealth Navy Order 43/42,²⁸ before sending the submission to the Admiralty. Instead, the Board simply forwarded Pope's original letter and its attached reports without any amendments, added considerations or any recommendations by the ACNB to the Secretary of the Admiralty, under a simple covering letter.²⁹ They left all decisions to the Admiralty. Nor is there any evidence that the ACNB made any effort to challenge the Admiralty's decision not to recognise the six men who had also been recommended by Commodore Pope. Nevertheless, while others might have benefitted from a more active role by the ACNB, the Tribunal's research confirmed that the authorised process for considering the nomination of Emms was followed correctly.

27 See paragraph 4-58 (discussion on Cunningham).

28 See paragraph 4-63 for details on CNO43/42.

29 TNA ADM 1/12390: Navy Office 448/201/1403, 25 April 1942.

- 13-27 There is no evidence that the recommendation to recognise Leading Cook (O) Emms's action was not appropriately considered, was obstructed or that maladministration, unfairness or injustice created a denial of due process.

Tribunal review of the merits of the case

- 13-28 The Tribunal also considered, from all the material available to it, the merits of the case for elevating the recognition of Emms for his actions in HMAS *Kara Kara*. This merits review was carried out in accordance with the Tribunal's approach, as outlined in paragraph 8-46 of the Report.
- 13-29 In examining the actions of Lieutenant Commander Fowler, the Tribunal found that on the basis of the evidence available, his judgements and recommendations were correct and, of themselves, were not unjust, misleading or prejudicial. He wrote to Emms's widow saying that he had brought Emms's gallant conduct to the attention of the proper authorities, which he did. However, the words Fowler used to describe Emms's actions in those letters, and his recommendation for recognition, are not indicative of those one would expect for the only other posthumous honour available at the time, the VC.
- 13-30 Since the promulgation of Emms's honour in 1942, there is no evidence that any review due to dissatisfaction or injustice was ever sought through the end of war list process.
- 13-31 One submitter claimed that Emms was part of an operation that was not a military success, and therefore the authorities did not wish to reveal the true situation. While this may have been the case, there is no evidence that leads to a conclusion that Emms was not appropriately recognised. Emms was recommended by Fowler on 24 February 1942 and his MID (Posthumous) was gazetted on 1 September 1942. This period is generally within the normal timeframe for consideration and approval of non-immediate honours.³⁰ Additionally, the descriptions used by Fowler in his letter of recommendation and his personal letters of condolence to Emms's widow are not consistent with trying to 'hush up' the circumstances as they relate to Emms.
- 13-32 It was also submitted in support of additional recognition, that Emms's actions were comparable to those of Leading Seaman Jack Foreman Mantle, VC, RN, Midshipman Robert Ian Davies, RAN, and Ordinary Seaman Edward Sheean, RANR. Scott's actions aboard *Koala* were also cited as a reason for not recommending a VC. While these are subjective propositions, it is not possible to come to a sustainable conclusion on the basis of comparisons between individual conduct in military actions, even those that occur at the same time and place. The Tribunal placed no weight on the use of comparisons to reassess the merits of a case to support varying Emms's extant recognition. As discussed at paragraph 8-48 of the Report, the Tribunal's guidelines for conducting the review reiterates that 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.

³⁰ As an example, see Chapter 12 on Midshipman Davies, RAN, who was serving under British command on 10 December 1941 at the time of his action. He was recommended by his CO for an honour in January 1942, which was approved and gazetted in October 1942 (paragraphs 12-17 to 12-19).

- 13-33 In his submission, to support the proposition that no change to Emms's MID (Posthumous) be contemplated, Mr Wilson speculated that the attack on *Kara Kara* was a 'passing event' and that Emms's 'fatal wounding ... was pure bad luck'. No evidence was presented to support this speculation. Instead, the Tribunal placed weight on the report of the Acting CO of HMAS *Gunbar* as described earlier at paragraph 13-12. That report does not describe by any measure, a 'passing attack' on the boom defences. In any case, regardless of the type of attack, the Tribunal did not conclude that Emms's death in this action was 'pure bad luck'.
- 13-34 The proposal by Mr Bradford that Emms be awarded the Medal for Gallantry (MG), a level three honour, is not supported by any evidence. Referring to the Tribunal's position on the 'posthumous gap' as outlined in paragraphs 8-18 to 8-20 of the Report, such a proposition cannot be sustained.
- 13-35 The Tribunal is satisfied that no evidence was provided by submitters to sustain an alternative finding through a merits review that Emms's gallantry was inadequately recognised.

Tribunal conclusion

- 13-36 The Tribunal concluded that on both process and merits, the case was properly considered at the time, followed due process correctly and that Leading Cook (O) Emms was appropriately honoured with an MID (Posthumous).

Tribunal recommendation

- 13-37 The Tribunal recommends no action be taken to award Leading Cook (O) Emms a VC for Australia or other further form of recognition for his gallantry or valour.

CHAPTER FOURTEEN

LIEUTENANT DAVID JOHN HAMER

14-1 David John Hamer was born in Melbourne on 5 September 1923. In 1937, at age 13, Hamer joined the RAN as a Cadet Midshipman. He served in the heavy cruiser *Canberra* and the destroyer *Napier*, and was promoted to Lieutenant in late 1943 following service in the United Kingdom and with the RN on HM Ships *Revenge* and *Excellent*. On his return to Australia, he was posted to the destroyer *Norman* before joining HMAS *Australia* in early 1944. Between October 1944 and January 1945, *Australia* took part in Allied landings in the Philippines, where the ship came under sustained attack by Japanese Kamikaze aircraft. For his actions during these attacks, Hamer was awarded the Distinguished Service Cross (DSC), which some have claimed should have been a Victoria Cross (VC). It is this action that is the subject of this inquiry.



Lieutenant David John Hamer at his action station
(Photograph courtesy of the Royal Australian Navy)

14-2 Hamer continued to serve until 1968 and completed his career as Director of Naval Intelligence, and, finally, as a Captain commanding the 10th Destroyer Squadron. After the Navy, he enjoyed a long and successful political career with the Liberal Party, serving in both houses of the Australian Parliament. He wrote a political dissertation called *Can responsible government survive in Australia?* in 1994, and a well-regarded history of aerial warfare entitled *Bombers versus battleships*, published in 1998.¹ David John Hamer died in Melbourne in 2002 at the age of 78.

14-3 After his death, Hamer was made a Member of the Order of Australia for service to the Parliament of Australia, for the recording of Australian military and political history as a researcher and writer, and for service to the community through his support for various arts organisations.

Recognition for service

14-4 For his naval service, Lieutenant (later Captain) David Hamer was entitled to the following honours and awards:

- Distinguished Service Cross
- 1939–1945 Star
- Atlantic Star
- Africa Star
- Burma Star with Pacific Clasp
- Defence Medal
- War Medal 1939–1945
- Australia Service Medal 1939–1945

¹ David Hamer, *Bombers versus battleships*, Allen & Unwin, St Leonards, 1998; and *Can responsible government survive in Australia?* University of Canberra, Canberra, 1994.

- Australian Active Service Medal 1945–1975 with Clasps ‘KOREA’, ‘MALAYA’, ‘MALAYSIA’, and ‘VIETNAM’
- Australian Service Medal 1945–1975 with Clasps ‘JAPAN’, ‘PNG’ and ‘FESR’
- Korea Medal
- United Nations Service Medal — Korea
- General Service Medal 1962 with Clasp ‘MALAY PENINSULA’
- Vietnam Logistic and Support Medal
- Australian Defence Medal
- Pingat Jasa Malaysia.

What has led to the review?

- 14-5 While the Hamer family support the inclusion of Lieutenant Hamer for the VC, they have not previously sought government review. Lieutenant Hamer was formally nominated for review in the Terms of Reference, after being proposed by the Chief of the Defence Force in a ministerial submission to the government.² Defence did not provide any material to the Tribunal to suggest that Hamer’s recognition was inadequate and was not able to provide any of the submissions that it claimed had led to his name being included in the Terms of Reference.

Submissions

- 14-6 The Tribunal received nine written submissions and heard seven oral submissions regarding Lieutenant Hamer. These were as summarised in the following two paragraphs.

Written submissions

- Submission 73 — Mrs Barbara Hamer (for)
- Submissions 73A and 201— Mr Tom Legoe (for)
- Submission 73B — Mr Andrew Hamer (for)
- Submission 86 — Mr John Bradford (support for upgrade to Distinguished Service Order)
- Submission 99 — Mr Graham Wilson (against)
- Submission 124 — Mr Richard Pelvin (against)
- Submission 142 — The Navy League of Australia (against)
- Submission 186 — Mr Des Shinkfield (for).

² 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.

Oral submissions

- a. Mr Graham Wilson — Public Hearing Canberra — 1 December 2011 (against)
- b. Mr Richard Pelvin — Public Hearing Canberra — 2 December 2011 (against)
- c. Mr Andrew Hamer — Public Hearing Melbourne — 14 December 2011 (for)
- d. Mr Des Shinkfield — Public Hearing Melbourne — 14 December 2011 (for)
- e. Mr Tom Legoe — Public Hearing Adelaide — 14 February 2012 (for)
- f. Mr John Bradford — Public Hearing Adelaide — 14 February 2012 (for upgrade to DSO)
- g. Mr John Burridge — Public Hearing Perth — 15 February 2012 (against).

Background

14-7 At the time of the action under review, Lieutenant Hamer was serving in HMAS *Australia* (II), a 10,000-ton County (Kent) class heavy cruiser in service with the Australian Fleet. *Australia* was well armed with four twin 8-inch and four twin 4-inch guns, and numerous smaller calibre weapons. *Australia* was commissioned in 1928, and, during the Second World War, served in the Atlantic and Indian Oceans and, finally, in the Pacific. From 1942, *Australia* was involved in fighting the Japanese and escorting Allied vessels on their island-hopping campaign.



HMAS *Australia*

(Photograph courtesy of the Royal Australian Navy)

14-8 After the Battle of Leyte Gulf, Hamer's assignment on the ship was as Air Defence Officer (ADO). In his unpublished memoir, 'Memories of my life', Hamer gives a description of his role as ADO, including while at action stations:³

The job of the ADO was to supervise the lookouts — there were six stands, each searching a 60-degree arc — and to direct the anti-aircraft guns on to threatening targets. For the 4-inch guns, this was done by aiming binoculars on a stand at the desired target, and the 4-inch director would follow pointers until the target was acquired. The other anti-aircraft guns were directed on to targets by a broadcast system, supplemented by telephone.

Prior to the Battle of Leyte Gulf, Hamer's action station in *Australia* was to be in charge of the two aft 8-inch turrets.⁴

14-9 In 1944, during the early part of Hamer's service on this vessel, *Australia* and her ship's company of around 850 were involved in bombarding enemy positions in the South-West Pacific Area in preparation for Allied landings, notably, in the Philippines. *Australia* served with distinction in the Battles of Leyte and Lingayen Gulf — the actions described below. Despite being hit numerous times, *Australia* survived the war and was finally decommissioned in August 1954.

Hamer's service in HMAS *Australia* — the Leyte Gulf landings

14-10 As the war moved closer to Japan, HMAS *Australia* was assigned to support the American invasion of the Philippines in 1944–1945. In October 1944, *Australia* took part in the Battle of Leyte Gulf, with the primary role of shore bombardment. This battle marked the beginning of the organised use of aerial Kamikaze tactics by the Japanese. Kamikaze attacks were a last-ditch effort to stave off the landings, and although they inflicted serious casualties, they were, overall, unsuccessful in turning the tide. On 21 October, *Australia* was hit by a Japanese suicide plane, killing 30 officers and men, and wounding a further 64.⁵ *Australia*'s Commanding Officer, Captain Emile Dechaineux, died of wounds inflicted during the action. The Commodore Commanding the Australian Squadron, Commodore John Collins, was also in *Australia* at the time and was severely wounded, necessitating his evacuation to Australia. On 24 October, prior to the end of the sea battle at Leyte, *Australia* sailed to Manus Island and on to the port of Espiritu Santo in the British New Hebrides (now Vanuatu) for repairs, under the temporary command of Commander Harley Wright, where the ship was made ready to rejoin the Task Group by 28 November 1944.

14-11 In a 1991 interview for the Keith Murdoch Sound Archive, Hamer mentions that at the commencement of the 21 October action, he spotted and gave the warning to the Oerlikon (anti-aircraft) gun crews of the presence of two Japanese aircraft. One of these was the aircraft that hit the bridge, killed the captain and inflicted heavy casualties on the anti-air lookout position.⁶ In the same interview,

3 Excerpts from Chapter 10 of David Hamer, 'Memories of my life: a Lieutenant in the cruiser *Australia*', unpublished, pp. 1–3. This memoir is currently held by the Hamer family and is not available to the public.

4 Transcript of Hamer interview, held by the Keith Murdoch Film and Sound Archive, Australian War Memorial, 1991, p. 45.

5 George Hermon Gill, *Royal Australian Navy 1942–1945*, vol. 2, *Australia in the War of 1939–1945*, series 2, Navy, Australian War Memorial, Canberra, 1968, p 513.

6 Transcript of Hamer interview, Keith Murdoch Film and Sound Archive, p. 46.

Hamer went on to state that following the attack at Leyte he was assigned the responsibilities of navigation and also reorganising the anti-aircraft defence, due to the casualties inflicted on this part of the ship's company.⁷ This account is consistent with excerpts from his unpublished memoir, 'Memories of my life'.

Hamer's service in HMAS *Australia* — the Lingayen Gulf landings

- 14-12 Following landings at Leyte and subsequent victories in the central Philippines, the Allied strategy focused on the invasion of Luzon, the largest of the Philippine islands, home of the capital, Manila. Amphibious landings at Lingayen Gulf were to be pivotal to the Luzon invasion. HMAS *Australia* was part of the Bombardment and Fire Support Group of 6 battleships, 12 escort carriers, 8 cruisers, 46 destroyers, and numerous smaller craft, which sailed from Leyte on 3 January. *Australia* was under the command of Captain John Armstrong, RAN. This group was only one element of an armada of some 650 warships, transports and landing craft of various types.⁸ Maps 2a and 2b show the Lingayen Gulf landings and approaches.
- 14-13 Unfortunately, a Report of Proceedings for HMAS *Australia* for the period 1–17 January 1945 could not be located. However, Commodore Harold Farncomb, RAN, (Commander of the Australian Task Group 74.1) was aboard and witnessed the action directly. On 18 January 1945, Farncomb transferred with his staff to HMAS *Shropshire*, after which he lodged his own report covering the month of January.⁹ As such, G. Hermon Gill, the official naval historian, pieced together a description of events from Captain Armstrong's after-action report of February 1945, Farncomb's January report and from various other official and unofficial sources.¹⁰ What follows is a description of what happened between 5 and 9 January 1945.

First hit to *Australia*

- 14-14 En route to Lingayen Gulf on 5 January 1945 at 1735, *Australia* suffered a direct hit from a Kamikaze on the port side of the upper deck amidships. While there were 55 casualties as a result of the action, including many from the ship's anti-aircraft crews, materiel damage was slight, and guns put out of action were soon effective again. The main loss of fighting efficiency was due to casualties.¹¹

Second hit

- 14-15 On 6 January, *Australia* began her bombardments to the eastern side of Lingayen Gulf by 1100. Suicide attacks continued throughout the day, and a number of ships

7 Transcript of Hamer interview, Keith Murdoch Film and Sound Archive, p. 46.

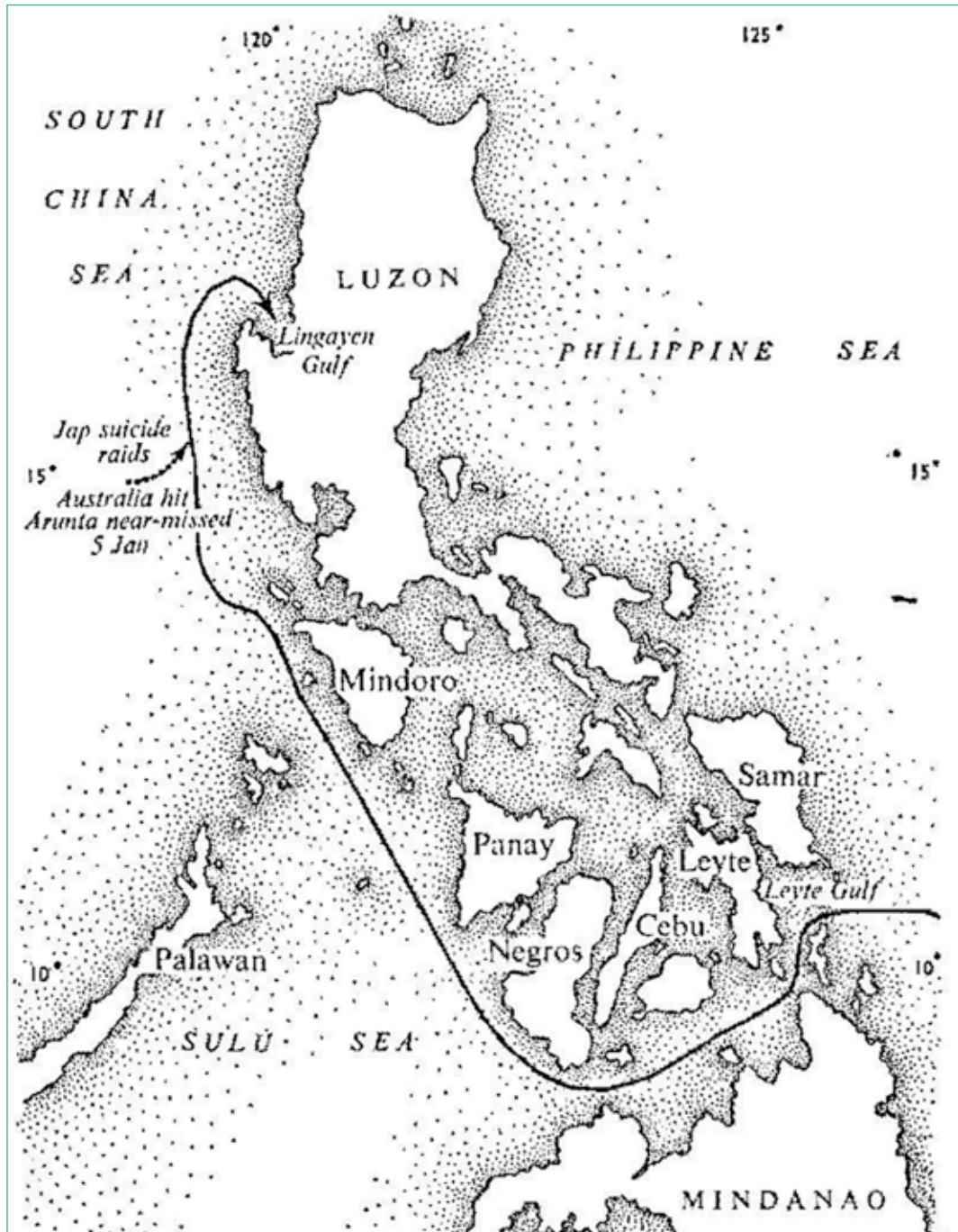
8 Gill, *Royal Australian Navy 1942–1945*, p. 579.

9 Reports of Proceedings HMAS and Establishments, HMAS *Australia* (II), AWM78, 44/5, www.awm.gov.au/collection/records/awm78/44/awm78-44-5.pdf, viewed 31 May 2012. A note on this file dated March 1981 states that a report for 1–17 January 1945 was never received.

10 Lingayen (Philippines) Musketeer (Mike 1) Task Force 74.1 (Fire Support) Action Reports, RAN Units HMA Ships *Australia*, *Shropshire*, *Arunta*, *Warramunga*, NAA: B6121, 66A.

11 Gill, *Royal Australian Navy 1942–1945*, pp. 582–583.

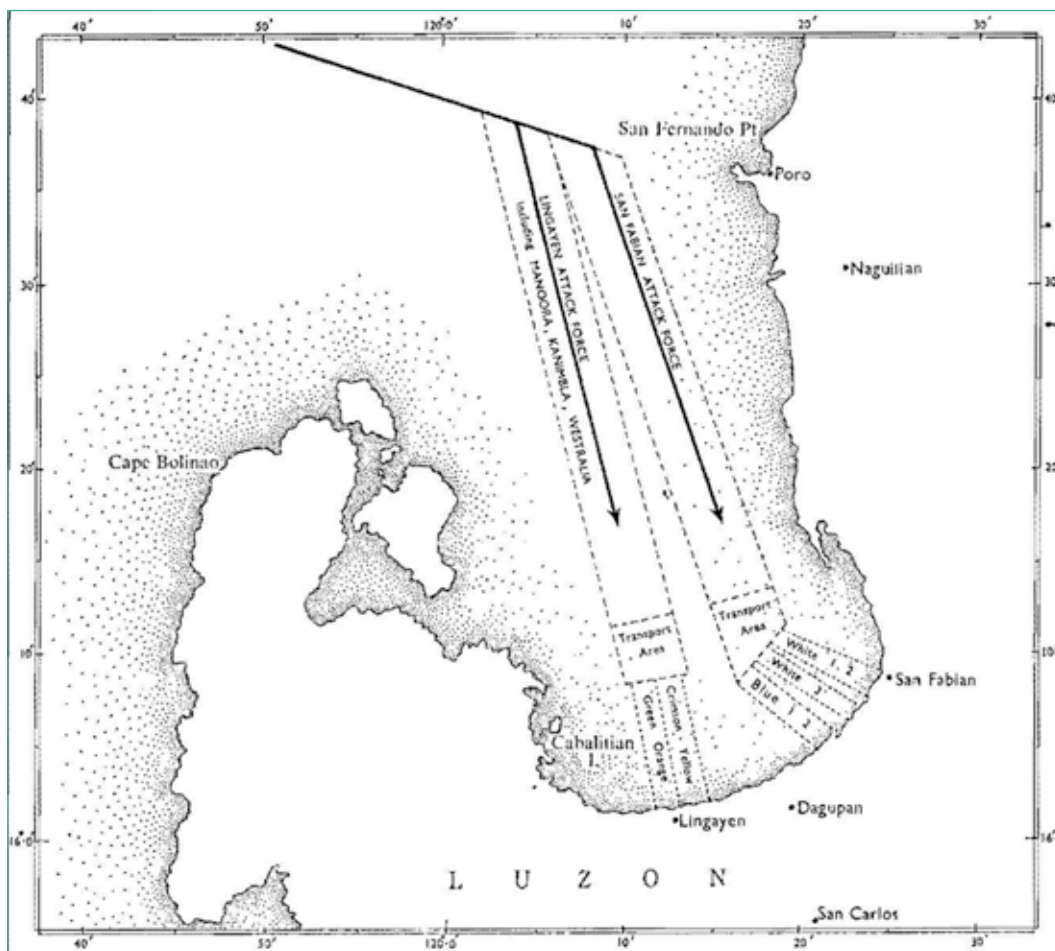
were damaged. At 1734, *Australia* suffered its second hit from a suicide aircraft. This aircraft carried a bomb that appeared to have been made from a large-calibre shell. Again, while one gun mount was put out of action, the main damage to fighting efficiency was due to the loss of a further 30 members of the ship's company.¹²



Source: Gill, *Royal Australian Navy 1942–1945*, pp. 580.

Map 2a The Lingayen Gulf landings — attack forces' approach

¹² Gill, *Royal Australian Navy 1942–1945*, p. 584.



Source: Gill, *Royal Australian Navy 1942–1945*, pp. 588.

Map 2b The Lingayen Gulf landings — Lingayen Gulf

- 14-16 Sunday 7 January 1945 is recorded as being a quiet day as far as air attacks were concerned. *Australia* was allocated a counter-battery role and recorded having little to do.¹³

Third and fourth hits

- 14-17 On the morning of 8 January, *Australia* was hit by two suicide aircraft within the space of an hour. The first was shot down 20 metres from the ship and skidded into the ship's side, doing little damage. The second was shot down just short of the ship but hit *Australia* on the waterline, just below the bridge. This aircraft carried a bomb that exploded against the ship and blew a hole 14 by 8 feet (approx. 4.3 m × 2.5 m) in the ship's side.
- 14-18 The casualties in these two attacks were recorded as being minor in number and caused 'mostly shock'. Referring to the second attack, *Australia's* report stated that 'the light casualties was remarkable, since a lot of shrapnel, [and] one engine and a propeller came inboard and landed in various parts of the ship'.¹⁴

¹³ Gill, *Royal Australian Navy 1942–1945*, p. 585.

¹⁴ *ibid.*, p. 586.

- 14-19 Hamer gave an account of this action in his memoir. He recorded that once the guns were trained on the only available target, there 'isn't much for the Air Defence Officer to do', so during this attack he was leaning over the Aircraft Defence Position (ADP) observing the actions of the Bofors gun crews below.¹⁵
- 14-20 Further in his memoir, Hamer recalled that the Kamikazes had almost no penetrative power, so going quickly below decks would have offered some safety to those on the upper decks from an attacking aircraft. In the Keith Murdoch Sound Archive interview, Hamer recalled that after what might have been the third hit, during a Kamikaze attack on a neighbouring ship, he looked around to see five lookouts coming back into the ADP after having left their positions to seek safety. Hamer charged these men with desertion of their posts in the face of the enemy. These charges were later downgraded, possibly at the behest of Captain Armstrong, who had earlier assumed command at Manus Island.¹⁶
- 14-21 On 8 January, the Bombardment Group, including *Australia*, carried out bombardments on Lingayen, San Fabian and San Fernando prior to the amphibious landings scheduled for the next day.

Fifth hit

- 14-22 On 9 January, the attacking forces moved further into the gulf to support the morning's landings at Lingayen and San Fabian. The main enemy opposition to the group continued to be Kamikaze attacks, and, at 1311, *Australia* was hit for the fifth and final time. The attack was carried out by two aircraft, one diving past *Australia* and hitting the battleship USS *Mississippi* near the bridge. The other aircraft came in ahead of *Australia* after a curving dive, and tried to hit the bridge and fore section. *Australia*'s action report records that:

He missed his aim, however, and diving under the foreyard his wing tip caught on a mast strut which swung him into the foremost funnel and over the side. There was no material damage [other] than cutting off the top third of the funnel ... radar and WT aerials ... There were no casualties.¹⁷

Again, Hamer recalled this attack in his memoir:

She was coming straight for the bridge, and when she was getting close I noticed out of the corner of my eye all the officers leaving the bridge. (I found out afterwards that the Captain said, 'I think it's about time we left here, gentlemen'. This wasn't unreasonable, because there was nothing useful they could do). I think I was a bit worried about morale, though if I'd thought about [it] I shouldn't have been, because none of the sailors could have seen what was happening on the bridge, in the very unlikely event that they were looking that way with a Kamikaze heading for them. Anyway, what I did was to jump up on the plotting table at the front end of the ADP, where I was fairly prominent to anyone from the gun crews who looked that way. I have seen accounts that I shook my fist at the Kamikaze. I can't remember doing this, which would have been a bit like Ajax defying the lightning. The aircraft passed about six feet above my head, but slightly off line. (I know how

¹⁵ Hamer, 'Memories of my life: a Lieutenant in the cruiser *Australia*', unpublished, p. 6.

¹⁶ Transcript of Hamer interview, Keith Murdoch Film and Sound Archive, pp. 49–51.

¹⁷ Lingayen (Philippines) Musketeer (Mike 1) Operation Report, paragraph 31, 3 February 1945, NAA: B6121, 66A.

high she was, because the wing left a scar mark along the side of the 8-inch director). Her wing hit the mast, and she veered into the forward funnel and over the side without hurting anyone — but scaring a few, believe me. I climbed down, rather embarrassed, as the Captain came back on the bridge.¹⁸

- 14-23 That evening, in preparation for a dusk attack by Kamikazes, the ships made smoke to blanket the target area. While there were several attacks, no ship was hit by a suicide plane. That evening *Australia* was directed to return to Leyte.
- 14-24 Given that *Australia* had been holed and was deliberately listed to starboard to prevent water ingress, *Australia* was ordered by US Navy Vice Admiral Jesse B Oldendorf, Commander of the task group, back to Leyte and then on to Plymouth for repairs. This ended *Australia*'s war service.¹⁹

Eyewitness accounts of Hamer's action

- 14-25 An eyewitness written account of the Lingayen action by Mr Des Shinkfield, then a Midshipman in the *Australia*'s Fore Director, is very similar to the content of Hamer's memoir. Mr Shinkfield recorded that those who saw Hamer maintain he shook his fist at the Kamikaze, and cited the same classical Ajax reference. Shinkfield also stated that he kept his eyes on the aircraft until the very last minute and that it came so close that he [Shinkfield] 'could have touched it with an outstretched arm'.²⁰
- 14-26 In his oral submission to the Tribunal, Mr Shinkfield reiterated that those who saw Hamer confirm that he shook his fist at the Kamikaze and that this act was an example to members of the crew. He added that Hamer faced death under fire. Mr Shinkfield also offered the opinion that there was little Hamer could have done as ADO in respect of directing fire, as all *Australia* had left was an anti-aircraft mount on 'B' turret to check the oncoming attack. Shinkfield, however, was not an eyewitness to Hamer's action, but rather reported what he had been told later by others.
- 14-27 Hamer's action that day is also mentioned in the memoirs of Rear Admiral (then Lieutenant Commander) Frank L George, RAN, a copy of which was provided to the Tribunal by Mrs Hamer. Admiral George stated that Hamer should have received a VC for his actions at Leyte and Lingayen. However, Admiral George does not appear to have been an eyewitness, so the Tribunal deemed this comment his personal opinion.
- 14-28 In his after-action report, *Australia*'s Captain Armstrong stated that two of the five Kamikaze attackers were definitely brought down before they hit the ship, two did not appear to be affected by *Australia*'s anti-aircraft fire and one missed his target completely.²¹ This may have been due to the accuracy of the anti-aircraft fire. He recorded that he considered that the same number of hits from bombs

18 Hamer, 'Memories of my life: a Lieutenant in the cruiser *Australia*', unpublished, p. 7.

19 Robert C Stern, *Fire from the sky: surviving the Kamikaze threat*, Seaforth Publishing, Barnsley, South Yorkshire, 2010, p. 143.

20 Des Shinkfield, *HMAS Australia: a lucky ship*, self-published, Melbourne, 2001, p. 161.

21 Lingayen (Philippines) Musketeer (Mike 1) Operation Report, paragraph 35, 3 February 1945, NAA: B6121, 66A.

or torpedoes would probably have done considerably more damage.²² Hamer's action was undoubtedly also witnessed by many of *Australia*'s crew, although no eyewitness reports could be located.

Chain of command for honours and awards

- 14-29 Recommendations for awards for valour and distinguished service aboard HMAS *Australia* went through the RAN system. At the time of the action, HMAS *Australia* was under Australian national command. Therefore, upon recommendation of the commanding officer of HMAS *Australia* (Captain John Armstrong, RAN) the nomination passed through Commodore Commanding HMA Squadron (Commodore Harold Farncomb, RAN — who was also on board *Australia*) and thence to the Australian Commonwealth Naval Board (ACNB).²³ On approval by the ACNB, the recommendation went to the Secretary to the Department of the Navy, and then to the British Admiralty.²⁴
- 14-30 The process for making and forwarding recommendations for RAN members were set out in Commonwealth Navy Order (CNO)43/42. Clause 3 of this order directs commanders not to suggest the nature of the award for which the subject was being recommended.²⁵ As such, neither Armstrong nor Farncomb could nominate Hamer for a VC or any other award. If they had intended a VC, the recommendation would have required an appropriate citation, carefully crafted to leave no mistake that a VC was the intended honour. Under CNO43/42, it was up to the Admiralty, based upon what evidence was placed before them, to decide what honour or award to give.
- 14-31 By 1945, Farncomb was well aware of the system of honours and awards in place and was in regular correspondence with the ACNB. In submitting his recommendations for honours and awards for the Philippines campaign, on 22 January 1945, Commodore Farncomb complained about the low number of recommendations going forward. He proposed to use the RN Form 58, which was consistent with those in use in squadrons of the (British) Home and Mediterranean Fleets.²⁶ Farncomb alerted the ACNB to its responsibilities and strongly recommended they align with the process in place in the RN. The proposal was endorsed by the ACNB on 23 February 1945. While at the time of the *Australia* action, the 'old' process was still in place; Farncomb chose to submit Hamer's recommendation on the new RN form.²⁷ Consideration of Hamer's case was therefore not affected by any of the difficulties inherent in the previous process.

22 Lingayen (Philippines) Musketeer (Mike 1) Operation Report, paragraph 35, 3 February 1945, NAA: B6121, 66A.

23 The Australian Commonwealth Naval Board was the governing authority over the RAN from its inception in 1911 through the First and Second World Wars. In early 1945, the Board consisted of the Minister of State for the Navy (The Hon. Norman Makin, MP), the First Naval Member (Admiral Sir Guy Royle, RN), the Second Naval Member (Commodore Henry Showers, RAN), the Third Naval Member (Rear Admiral Alec Doyle, RAN), the Business Member (Mr Hugh Brain), Finance Member (Mr Raymond Anthony) and the Secretary of the Department of the Navy (Mr Alfred Nankervis). *The Navy List*, January 1961, Renown Press, Carnegie, Victoria, p. 61.

24 Minute by Defence Committee, 14 September 1942, NAA: A703/138, 642/2/12/Part 1.

25 Commonwealth Navy Order 43/42.

26 Minute A.F. 16/290/25, 22 January 1945, NAA: MT1214/1, 448/201/2002.

27 TNA: ADM 116/5159.

Honours and awards made for the action

14-32 On 23 January 1945, Commodore Farncomb passed to the Secretary of the ACNB recommendations for honours and awards in connection with the Lingayen landings.²⁸ This included one for Hamer, whose recommendation read:

For outstanding efficiency, coolness and courage during the whole period of the operation. His handling of the A/A [anti-aircraft] lookouts and constant instructions to the A/A gun positions through the Action Broadcast System over a period of 7 to 8 days was exemplary. His orders and instructions were given calmly and clearly and did a great deal to give confidence to the A/A guns' crews. His team of lookouts were well trained and made many visual sightings of enemy aircraft when radar had missed them. On one occasion when it appeared certain that a suicide plane would hit the Air Defence Position, he maintained his place and carried on directing ship's A/A fire calmly and without flinching. The wing of the plane passed within some 15 feet of his head.

Subsequently, the Secretary of the Naval Board passed these recommendations to the Secretary of the Admiralty in London. This appears to have been sent on 28 February 1945.²⁹

14-33 A long list of awards were then granted to the officers and men of HMA Ships *Australia*, *Shropshire*, *Arunta* and *Warramunga* for service in the Leyte and Lingayen campaigns, including a Companion of the Order of the Bath (recommended by Admiral Sir Bruce Fraser, RN, from aboard one of the US ships) and a US Navy Cross to Commodore Farncomb. Farncomb further recommended a series of awards. As a result, 2 Distinguished Service Orders (one to Captain Armstrong) and 11 Distinguished Service Crosses (one to Hamer) were awarded. A further 26 Distinguished Service Medals and 52 Mentions in Despatches were also awarded.³⁰ In this regard, the Tribunal considered that the actions of RAN members in the Leyte and Lingayen campaigns were fairly recognised.

A Victoria Cross for Hamer?

14-34 Hamer wrote in his memoirs that while on leave in Sydney between February and May 1945, he was called to meetings with the Second and First Naval Members (Commodore Henry Showers, RAN, and Admiral Sir Guy Royle, RN, respectively) who both interviewed him individually. He recorded that on that day, he was informed by the Second Naval Member that he had been recommended for the VC and that he should expect 'an announcement in a few weeks'.³¹ According to Hamer, about a week later he was again summoned by the Second Naval Member and informed that the VC recommendation had been withdrawn because the Americans were trying to conceal from the Japanese the effectiveness of the Kamikaze campaign. They were very anxious that no awards should be made that

28 File correspondence, Recommendations for Honours and Awards from the Commodore commanding HMA squadron, NAA : MT 1214/1; Operation in the Philippines: recommendations, honours and awards to members of various crews of HM Australian Ships. The folio dated 19 January 1945 lists Hamer as the top recommendation in order of merit, TNA: ADM 116/5159.

29 File correspondence, NAA : MT 1214/1.

30 Alan Payne, *HMAS Australia: the story of the 8 inch Cruiser 1928-1955*, The Naval Historical Society of Australia, Garden Island, 2000, lists the HMAS *Australia* awards as does Shinkfield, *HMAS Australia: a lucky ship*, p. 166.

31 Hamer, 'Memories of my life: a Lieutenant in the cruiser *Australia*', unpublished, p. 9.

would highlight the problems of defence against such attacks. Hamer wrote that because of this, the Second Naval Member advised him that it had been decided to withdraw the VC recommendation.³²

- 14-35 The Tribunal was also provided a copy of private correspondence from Captain Charles Parker, RAN, the Second Naval Member's assistant, to a colleague, Captain James Foley, RAN, the Naval Liaison Officer in London, in which Parker writes: 'Young Hamer showed up particularly well. One of my informants — who possibly is quite ill-informed, told me that Hamer was being recommended for a VC!'³³ This letter has been used in some submissions to attest that Hamer was recommended for the VC at the time, but was later denied the award.³⁴
- 14-36 Apart from Hamer's recollections and personal correspondence between naval colleagues written at the time, and despite an extensive search, the Tribunal could find no evidence of a VC recommendation for Hamer. All that the ACNB had were nominations from Captain Armstrong, endorsed by Commodore Farncomb, for a large number of awards for HMAS *Australia* and other ships' companies. These were subsequently forwarded to the Admiralty for agreement and promulgation.

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

Arguments put forward in submissions for the award

- 14-37 Several submitters provided the following claims for the award of the VC to Lieutenant Hamer:
- Hamer was told he had been recommended for the VC and that this was withdrawn at the behest of the Americans. This was a great injustice, and this should now be corrected. Hamer should get the VC (Submission 73).
 - Reliable eyewitnesses agreed that Hamer should have been awarded the VC (Submissions 73, 186 and 201 plus memoirs of Rear Admiral George and correspondence included in Submission 86).
 - Hamer's peers — Admirals Guy Griffiths, Sir Brian Murray and David Leech and Commodore Dacre Smyth — all agreed Hamer should have been awarded the VC (Submission 73B).
 - Hamer's action while under devastating Kamikaze attack had a very positive effect on the ship's morale. It was 'the most conspicuous bravery or devotion to duty in the presence of the enemy'. This qualifies Hamer for a VC (Submission 73B).
 - 'The political climate at the time — the still current Kamikaze threat and the first VC for the RAN — would have created too much public attention on the effectiveness of the Kamikaze strikes and it [the award recommendation] was politically downgraded' (Submission 73B).

32 Hamer, 'Memories of my life: a Lieutenant in the cruiser *Australia*', unpublished, p. 9.

33 Captain CA Parker correspondence [Foley papers] of 9 February 1945. Copy provided by Rear Admiral James Goldrick [Retd].

34 Submissions 73B and 86.

- ‘Given the powerful and descriptive recommendation provided by Armstrong in support of Hamer receiving a decoration and Farncomb’s personal endorsement, I find it surprising and disappointing that Hamer did not receive a DSO’ (Submission 86).

14-38 These views were reiterated in oral submissions. None of the submitters provided any missing correspondence, new or further evidence to support their claims for the award of the VC for Lieutenant Hamer.

Arguments put forward in submissions against the award of the VC

- 14-39 The three submissions against the award provided the following opposing views:
- Hamer received the DSC for his action and that was how the recommendation read. This was a fair and just reward (Submissions 99, 124 and 235).
 - Hearsay, anecdotes and contemporary commentary by some (including Hamer) that he was to be awarded the VC are irrelevant — Hamer was not recommended for a VC, but ‘some award’ in accordance with CNO43/42 (Submissions 99 and 124).
 - Hamer’s action, while brave and heroic, made no difference to the enemy. No one disagrees that Hamer was doing the best he could at the time, but he was still just doing his job. He had little choice (Submission 99).

Tribunal consideration of the award’s process

- 14-40 In considering the case for a possible upgrade of the DSC to the VC (or some other award) for Lieutenant Hamer, the Tribunal first conducted a process review as described in paragraph 8-44 of the Report.
- 14-41 As previously described, the process at the time was for recommendations to be passed from Captain John Armstrong, RAN, to the Commodore Commanding HMA Squadron (Commodore Farncomb, RAN, who was a witness) and then on to the Secretary of the Department of the (Australian) Navy before forwarding to the British Admiralty for final consideration. At the time of the recommendations going forward, CNO43/42 was in place, which instructed commanding officers that ‘the nature of the award is not to be suggested’. In Hamer’s case, a correctly completed nomination went forward, strictly in accordance with the extant rules, and an appropriate citation was written. No witness statements were requested or attached.
- 14-42 Given the large number of awards for the Lingayen Gulf action (93 in total), and the detail contained in Hamer’s DSC recommendation, the Tribunal determined that the recommending officers and those in the chain of command took considerable care to ensure the appropriate honour (as they saw it) was proposed for those deemed so deserving. Hamer’s recommendation was detailed and carefully constructed.
- 14-43 Furthermore, that such a large number of awards were processed very quickly contradicts the proposition in Submission 73 that the Americans asked the RAN to hold back awards to hide from the Japanese the effectiveness of their Kamikaze attacks. It is likely the Japanese would have known how successful their attacks

were from Allied reporting of casualties and from their intelligence sources. If anything, the process was fast for the time, with forwarding of recommendations to gazettal taking just three months.³⁵

- 14-44 Proposals by a number of submitters (including the Hamer family) that, as Hamer was told by at least two senior naval officers that he had been recommended for the VC means that this somehow constituted a formal recommendation, also do not stand scrutiny. While Hamer may have known the senior naval hierarchy, no recommendation with appropriate wording that could lead to a VC could be located by the Tribunal or was provided by the submitters, nor was there anything on file to corroborate the story. Only documentation for Hamer's DSC could be located. If the Chief of Naval Staff (Admiral Royle, RN) had intended Hamer to be considered for a VC, then the recommendation that went forward to the Admiralty would have been far stronger and contained the necessary wording to allow appropriate consideration by the Admiralty Honours and Awards Committee. In addition, Hamer's name would be expected to be at the head of the order of merit list — it was not. The Tribunal has also been unable to find any private correspondence between Royle and the Admiralty that would suggest that Hamer be considered for the VC.
- 14-45 The Tribunal placed no weight on Hamer's recorded conversation between himself and the Second Naval Member regarding the alleged withdrawal of his VC recommendation (see paragraph 14-34). Such a conversation is not a formal recommendation for an honour or award.
- 14-46 Several submissions noted that Commodore Farncomb offered his personal endorsement of Hamer's actions in writing such that 'I personally observed this officer throughout the operation and entirely subscribe to the above [recommendation by Armstrong, for an honour]. His conduct was outstanding in every way'. This was an endorsement of Armstrong's citation, processed through the chain of command, in accordance with the established procedure. This was not of itself a recommendation for a Victoria Cross. The Tribunal noted that Hamer appeared second behind Armstrong in Farncomb's order of merit.³⁶
- 14-47 The Tribunal also regarded the correspondence between Captains Parker and Foley (at paragraph 14-35) as pure speculation on Parker's behalf and possibly just gossip, and, again, the Tribunal placed no weight on it.
- 14-48 In regards to the proposal by Mr Bradford — Submission 86 — that Hamer's DSC should be upgraded to a DSO, the rules at the time were against Hamer being considered eligible for that award. The DSO was awarded for both conspicuous gallantry and leadership, and was generally intended for commanding officers and those of higher rank (naval Commander and above). However, since 1992, the DSO and all other Imperial awards have not been available to Australia.
- 14-49 Armstrong and Farncomb were witnesses to Hamer's action and clearly intended Hamer to receive an award but placed him lower in the order of merit — an indication to the Admiralty of what award they had in mind. No other senior Australian naval officer (including Armstrong and Farncomb) later raised

³⁵ Farncomb forwarded recommendations on 23 January 1945. Gazettal was on 27 April 1945. *London Gazette*, no. 37058, 27 April 1945, pp. 2298–2299.

³⁶ TNA ADM 116/5159.

objections to Hamer's DSC, or sought review despite the opportunity to do so during consideration of the end of war list. The Tribunal found no other evidence that the DSC was not the intended award.

- 14-50 The Tribunal therefore concluded that the process followed was fair, just and correct at the time, and there was no maladministration, bias, missing documentation or procedural flaws. According to the rules as applied at the time, the process followed was correct.

Tribunal review of the merits of the case

- 14-51 The Tribunal also considered, from all the material available to it, the merits of the case for elevating the recognition of Hamer for his actions in Lingayen Gulf. This merits review was carried out in accordance with the Tribunal's approach set out in paragraph 8-46 of this Report.
- 14-52 The Tribunal noted that the recommendation for Lieutenant Hamer's Lingayen Gulf action is of strong DSC quality, but does not contain enough in substance or wording to describe an outstanding 'signal act of valour' necessary to allow the Admiralty to consider him for the VC. The recommendation states that he 'maintained his place and carried on directing ship's A/A fire calmly and without flinching'. Similar evidence was provided by Hamer himself (not evidence on which a recommendation for a decoration should be made), and by Mr Des Shinkfield, then a midshipman in *Australia*. To be eligible for consideration for the VC, the recommendation must contain reference to some or all of the following:
- in the presence of the enemy;
 - perform some signal act of valour or devotion to their country;
 - most conspicuous bravery;
 - daring or pre-eminent act of valour or self-sacrifice or extreme devotion to duty; and/or
 - most conspicuous gallantry of the highest order.
- 14-53 Hamer's recommendation uses terms such as 'efficiency', 'coolness' and 'courage' — not the terms expected of that for a VC. The Tribunal concluded that while Lieutenant Hamer displayed 'outstanding efficiency, coolness and courage', the wording of his recommendation did not meet the exacting standards required for the award of the VC, leaving the Admiralty little room to recommend a VC for Hamer to the King. Further, the Tribunal concluded that considering Lieutenant Hamer's rank and responsibilities, and the wording of the recommendation by those best placed to observe, the DSC was the appropriate honour.
- 14-54 No previously missing, new or compelling evidence was produced by submitters. The Tribunal therefore concluded that there was no basis to question the judgement of the Admiralty in 1945, and now recommend that Hamer be awarded the VC for *Australia* or any other honour.
- 14-55 No other form of recognition was sought by any submitters.

Tribunal conclusion

- 14-56 The Tribunal concluded that on both process and merits, the case was properly considered at the time, followed due process correctly and that Lieutenant Hamer was appropriately honoured with a DSC.

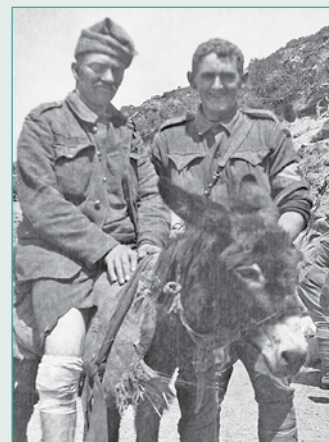
Tribunal recommendation

- 14-57 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.

CHAPTER FIFTEEN

PRIVATE JOHN SIMPSON KIRKPATRICK

15-1 John Simpson Kirkpatrick, more commonly known as John or Jack Simpson, was born on 6 July 1892 in South Shields, County Durham, England. When he was about 16 years old, he volunteered to train as a Coastal Defence Gunner in the Royal Field Artillery.¹ In early 1909 he became a British Merchant Seaman and while in SS *Yeddo* he landed in Newcastle, Australia, in May 1910. Simpson and others deserted the ship. He then worked at various itinerant shore jobs before returning to sea, working in several merchant vessels operating around the Australian coast until 1914.²



Private John Simpson Kirkpatrick and his donkey
(Photograph courtesy of the Australian War Memorial)

15-2 Soon after the outbreak of the First World War, Simpson, then in Western Australia, joined the Australian Imperial Force (AIF). He enlisted as John Simpson (Simpson was his mother's maiden name) on 25 August 1914, and was allotted as a Stretcher Bearer to 3rd Field Ambulance, a unit of the newly forming 1st Australian Division. Simpson departed in a troopship convoy on 1 November 1914. He arrived in Egypt on 3 December for training prior to the division's first engagement of the war.

15-3 Simpson took part in the landing at Gallipoli on 25 April 1915. He was among the first attacking waves ashore, supporting the 3rd Brigade covering force. Simpson carried casualties, with the rest of the bearers, on that first day. Command and control was stretched, and as operations continued amid very high casualties, Simpson, like many others, became separated from his unit. He stumbled across a donkey in a hut, and with it worked up and down the dangerous valleys collecting slightly wounded servicemen and carrying them to the dressing stations.³ Simpson soon became known among the soldiers fighting in the tight confines of the Gallipoli beach head. Simpson continued this work until 19 May 1915, when he was killed in action by Turkish machine-gun fire.⁴ Simpson was buried 'that night on a little hill near the seashore known as Queensland Point'.⁵

15-4 It is Simpson's 25 days of service from 25 April to 19 May 1915 that is the subject of this Inquiry.

Recognition for service

15-5 For his Army service, Private John Simpson Kirkpatrick was entitled to the following Defence honours and awards:

- 1914–1915 Star

¹ For further details on Kirkpatrick's early life see John H Pearn & David Gardner-Medwin, 'An Anzac's childhood: John Simpson Kirkpatrick (1892–1915)', *Medical Journal of Australia*, vol. 178, 21 April 2003.

² Papers of Kirkpatrick, John Simpson (Private), AWM 3DRL 3424.

³ 'War Diary', 3rd Australian Field Ambulance, April 1915, AWM4, 26/46/4.

⁴ 'War Diary', 3rd Australian Field Ambulance, May 1915, p. 9, AWM4, 26/46/5.

⁵ Letter, HK Fry to Miss Simpson Kirkpatrick, 2 September 1915, AWM 3DRL 3424.

- British War Medal 1914–1920
- Victory Medal
- Mention in Despatches.

What has led to the review?

15-6 Over a long period of time, there have been many instances where groups, parliamentarians and individuals have called for Simpson to be awarded a Victoria Cross (VC).

15-7 According to the author, Tom Curran:

In 1967 Australian leaders attempted to correct an inexplicable error of omission. Prime Minister Harold Holt; Governor-General Lord Casey; and Chief of the General Staff, Major General Brand; and others sent a petition to the British War Office, on behalf of the Australian people, requesting that a posthumous Victoria Cross be awarded to Private John Simpson Kirkpatrick. Their request was denied.⁶

The Tribunal was unable to find any official papers or files to verify that the petition to the British War Office was ever actually raised or forwarded for consideration, or rejected.

15-8 More recently, on 31 October 2005, Ms Jill Hall, MP, Member for Shortland, included a similar statement in a petition before the House of Representatives.⁷

15-9 Some members of Parliament have supported and others opposed campaigns for the posthumous awarding of a VC to Simpson:

- a. On 6 February 1995, Mrs Mary Easson, MP, spoke on behalf of the Anzac Day Bill 1994. During this speech, Mrs Easson referred favourably to the deeds of Simpson.
- b. On 21 January 2000, Ms Hall wrote to the Prime Minister, John Howard, urging the government to award a VC to Simpson as a matter of urgency. This was not agreed.
- c. On 7 March 2000, Ms Hall, in an adjournment speech in the House of Representatives, called for Simpson to be awarded a VC.
- d. On 30 October 2000, several speeches were made regarding Simpson in the House of Representatives in private members' business. Speakers included Ms Hall, Mr Ross Cameron, MP, Mr Harry Quick, MP, and Mr Gary Hardgrave, MP.
- e. On 8 March 2001, Senator Chris Schacht spoke in the Senate, nominating Simpson as one of three to be awarded a VC.
- f. On 4 April 2001, Senator Schacht introduced the Award of the Victoria Cross for Australia Bill 2001. Simpson was one of three named as deserving of the VC.

⁶ Tom Curran, *Across the bar, The story of Simpson, the man with the donkey: Australia and Tyneside's great military hero*, Ogmios Publications, Brisbane, 1994, p. 369; Curran later corrected the reference to the Chief of the General Staff as Thomas Daly (not Charles Brand): Tim (sic) Curran, *Sabretache: the Journal of the Military Historical Society of Australia*, vol. 49, no. 4, December 2008, p. 30.

⁷ House of Representatives Petitions: Private John Simpson Kirkpatrick Petition, 31 October 2005.

- g. On 4 June 2001, Mr Sid Sidebottom, MP, spoke in support of the Defence Act Amendment (Victoria Cross) Bill 2001. Simpson was one of three named as deserving of the VC.
- h. On 14 March 2005 and 23 May 2005, The Hon. Bruce Scott, MP, spoke in the House of Representatives, against a proposal by Ms Hall to award the VC to Simpson posthumously.
- i. On 31 October 2005, Ms Hall put a petition before the House of Representatives to have the VC posthumously awarded to Simpson. This was on behalf of 36 citizens.
- j. On 21 May 2007, Ms Hall again put a petition before the House of Representatives to have the VC posthumously awarded to Simpson. This was on behalf of 414 citizens.
- k. As recently as 19 March 2012, Ms Hall again spoke in the House of Representatives in support of the award of the VC for Simpson.

15-10 The inclusion of Simpson in this Inquiry formally commenced on 19 October 2010 during an estimates hearing of the Senate Standing Committee on Foreign Affairs, Defence and Trade. A member of the committee, Senator Guy Barnett (Liberal, Tasmania), named Simpson among six candidates he put forward for consideration of the award of the VC.⁸ Consequently, Simpson's name was included by the Parliamentary Secretary for Defence on the list directed in the Terms of Reference to this Inquiry.

Submissions

15-11 The Tribunal received 23 written submissions and heard 6 oral submissions regarding Private Simpson. Of those submissions, 12 supported additional recognition, 15 were against additional recognition and 2 took no position. In addition, submissions referring to statements made in Parliament were also received.

Written submissions

- a. Submission 1 — Mr Peter Dermody (against)
- b. Submission 7 — Ms Sharon Telle (against)
- c. Submission 10 — Mr Peter Shaw (for)
- d. Submission 12 — Mrs JD Crowle (against)
- e. Submission 23 — Mr Norman Corker (against)
- f. Submission 38 — Ms Jill Hall, MP (for)
- g. Submission 53 — Lieutenant Colonel Peter Raue (Retd) (for)
- h. Submission 60 — Mr Alfred Brogan (against)

⁸ Senate Foreign Affairs, Defence and Trade Legislation Committee, Supplementary budget estimates, 19 October 2010, pp. 106–109.

- i. Submission 63 — 2/1st Australian Machine Gun Battalion Association (Victoria) (against)
- j. Submission 67 — Ms Lynda Watson, Teacher, on behalf of Year 2 Yakamia Primary School, Albany, WA, (for)
- k. Submission 89 — Nowra Greenwell Point RSL Sub-Branch (no position)
- l. Submission 99 — Mr Graham Wilson (against)
- m. Submission 100 — Mr Lloyd Broderick (against)
- n. Submission 116 and 116A — Mr Grant Malcolm (for)
- o. Submission 117 — Mr James Mulholland on behalf of South Shields Local History Group (United Kingdom) (for)
- p. Submission 124 — Mr Richard Pelvin (against)
- q. Submission 191 — Lieutenant Colonel Harry Smith (Retd) (no position)
- r. Submission 193 — Mr Chris Schacht (former Senator) (for)
- s. Submission 207 — The Hon. John Howard (against)
- t. Submission 214 — Mr Richard Kubicki (against)
- u. Submission 234 — The Rev Dr Peter Hollingworth (against)
- v. Submission 264 — Ms Dorothy Graham (for).

Oral submissions

- a. Mr Graham Wilson — Public Hearing Canberra — 1 December 2011 (against)
- b. Mr Richard Pelvin — Public Hearing Canberra — 2 December 2011 (against)
- c. Mr Alfred Brogan — Public Hearing Melbourne — 15 December 2011 (against)
- d. Mr Grant Malcolm — Public Hearing Perth — 15 February 2012 (for)
- e. Ms Jill Hall, MP — Public Hearing Canberra — 14 March 2012 (for)
- f. Mr Chris Schacht — Public Hearing Canberra — 14 March 2012 (for).

Background

- 15-12 The first contingent of the Australian Army's expeditionary force in the First World War, known as the AIF, raised in August 1914, was commanded by Major General William Bridges and consisted primarily of the 1st Division. This division comprised three infantry brigades (1st, 2nd and 3rd) and a light horse brigade. Medical support for each brigade was provided by a field ambulance. Thus the 3rd Infantry Brigade, which was raised from Queensland, South Australia, Western Australia and Tasmania, was supported by the 3rd Field Ambulance, which was raised in the same states.⁹
- 15-13 A Queenslander, Lieutenant Colonel Alfred Sutton, was appointed Commanding Officer (CO) of the 3rd Field Ambulance, which consisted of three sections (A, B

⁹ CEW Bean, *The story of ANZAC: the first phase, The official history of Australia in the war of 1914-1918*, vol. 1, 11th Edition, Australian War Memorial, Canberra, 1941.

and C), each divided into Tent and Bearer subdivisions. Those subdivisions and their original commanders were:

- A Section (Queensland), (with Lieutenant Colonel Alfred Sutton attached) under the command of Captains Graham Dixon and H Victor Conrick
- B Section (South Australia), under the command of Captains Frederick Goldsmith, H Kenneth Fry and Charles Moodie
- C Section (Tasmania and Western Australia), Bearer subdivision (from Western Australia) under the command of Captain Douglas McWhae; and the Tent subdivision (Tasmania) under Major Harry Butler.¹⁰

15-14 Simpson enlisted in the AIF on 25 August 1914, was allotted as a Stretcher Bearer and was assigned to C Section, Bearer subdivision, 3rd Field Ambulance, which was formed at Blackboy Hill, Western Australia.

15-15 The 1st Division departed Australia on 1 November 1914 and continued its training in Egypt, where the infantry, artillery, ambulance, transport and divisional light horse units began to form as a cohesive division. On 13 December 1914 Lieutenant Colonel Sutton wrote in his diary:

At last I am complete, a composite Field Ambulance. We have never met before. I have not been informed of anything concerning No. 3 except the details of A Section in which I am attached. Here we are dumped in the desert to work out our own salvation as best we may.¹¹

15-16 In Egypt, the 1st Division was joined by New Zealand forces and additional Australian units. By January 1915 the Australian and New Zealand units had been formed into the Australian and New Zealand Army Corps (soon known as the Anzac Corps) under Major General William Birdwood. The Anzac Corps had two divisions. Bridges continued in command of the 1st Australian Division, while the New Zealand Infantry Brigade, the New Zealand Mounted Rifles Brigade, the 1st Australian Light Horse Brigade and (after it arrived in February) the 4th Australian Infantry Brigade (commanded by Colonel John Monash) formed the New Zealand and Australian (NZ&A) Division under Major General Alexander Godley.

Gallipoli landing

15-17 While training was under way in Egypt, preparations began for an attack on the Gallipoli Peninsula, Turkey, as part of an Allied operation to seize the Dardanelles and force the capitulation of Constantinople. General Sir Ian Hamilton, Commander-in-Chief of the Mediterranean Expeditionary Force, ordered that two covering force brigades (one Australian and one British) were to land on their respective beaches on 25 April under cover of a naval bombardment.

15-18 Birdwood decided to make the landing with the 1st Australian Division, to be followed later by the NZ&A Division. Bridges selected the 3rd Brigade, commanded by Colonel Ewen Sinclair-MacLagan, and supported by the 3rd Field Ambulance, as the covering force. The brigade was to push inland to seize and

¹⁰ S Austin & R Austin, *The body snatchers: history of the 3rd Field Ambulance 1914-1918*, Slouch Hat Publications, McCrae, Victoria, 1995; and 3rd Field Ambulance (AMC) Nominal Roll, AWM 26/46/1.

¹¹ 'War Diary', 3rd Australian Field Ambulance, August 1914 - February 1915, p. 30, AWM4, 26/46/1.

occupy the ridge from Gaba Tepe towards Chunuk Bair. The rest of the division, landing immediately after the beachhead was controlled, would secure both the main ridge to the north and the left flank.

- 15-19 Corps headquarters recognised that the operation was likely to be fluid and directed that only the Bearer subdivisions of the Field Ambulances were to go ashore in the assault; the Tent subdivisions would remain afloat and provide assistance on the hospital ships.¹² As a result, on 19 April 1915 the Assistant Director of Medical Services (ADMS) 1st Australian Division, Colonel Neville Howse, VC, issued the following order to 3rd Field Ambulance:

The Bearer sub-division of No. 3 Field Ambulance, 3 officers, 3 NCOs and 27 squads of 4 men with all available water bottles and surgical haversacks will land with the covering party. They will be under the orders of the OC, Covering Force, and will operate over the area occupied by the 3rd Infantry Brigade.¹³

- 15-20 The bearer sections of the 3rd Field Ambulance were, therefore, part of the first troops that landed at Gallipoli in the pre-dawn of 25 April 1915. Corporal Andrew Davidson of the 3rd Field Ambulance recorded that we 'landed about 5 am on the 25th. All C Bearer Section were in one boat, and we had many men killed and wounded'.¹⁴

- 15-21 In the landing, north of Ari Burnu, three men from 3rd Field Ambulance were killed and 14 more were wounded. Almost all of its bearers became scattered with the rifle companies and lost contact with the medical officers, who, waiting behind to attend wounded men on and near the beach, also lost contact with their battalions. Moving up in the direction of the fighting and meeting streams of wounded, the medical officers collected some bearers and established aid-posts, some more and some less advantageously placed at the head of the gullies, close behind the gradually forming battlefront.¹⁵

- 15-22 The landing did not go as planned, and while the 1st Division secured a foothold on the peninsula, its brigades and battalions became intermingled. The 1st, 2nd and 3rd Field Ambulances concentrated their efforts chiefly on the long gullies (later known as Shrapnel Gully and Monash Valley) and their branches. Sections became dispersed, and throughout the day many ambulance bearers, among them Private Simpson, worked to a great extent on their own.

- 15-23 By the time Colonel Howse landed with the divisional headquarters at 0730, the wounded were already accumulating on the beach and their evacuation became an urgent matter. In the absence of corps staff, Howse established a Casualty Clearing Station — representing both a field hospital and an evacuation centre — and arranged for the care of the wounded until cleared from the beach. Strong Turkish defences were inflicting heavy casualties and by 0300 on 26 April, over 1,700 casualties had been evacuated. Of the last 500, more than half were stretcher cases.

¹² For details of the Corps Order, see Austin & Austin, *The Body Snatchers*, p. 20.

¹³ AG Butler, RM Downes, FA Maguire & RW Cilento, *Gallipoli, Palestine and New Guinea, The official history of the Australian Army Medical Services in the War of 1914–1918*, vol. 1, Australian War Memorial, Melbourne, 1930, p. 122.

¹⁴ Letter, AR Davidson to Major Treloar, 28 March 1938, AWM 417/020/035.

¹⁵ Butler, *The Australian Army Medical Services in the War of 1914–1918*, p. 136.

15-24 In many cases, the arrangements for casualty evacuation needed to be innovative. Within the infantry battalions, soldiers acted as regimental stretcher-bearers to carry casualties to Battalion Regimental Aid Posts. From there, field ambulance stretcher-bearers carried the seriously wounded to the ambulance, though in the first days of the landing they generally took them direct to the Casualty Clearing Station on the beach.¹⁶ That is not to say that the field ambulance stretcher-bearers were safe from enemy fire. As Bean recorded:

The work of a stretcher-bearer often prevented him from taking cover which others could seek. Thus on April 26th and the following days the Turks poured down Shrapnel Gully the rain of shells which gave it that name ... most passers through the valley were able to take some cover during the heavier spasms [of fire]. But the stretcher bearers carried their burdens through it, erect ... Many became fatalists. If the shell 'had their name and number marked on it,' as they said, they would be hit. Until that shell arrived, it was best to let others see them going proudly rather than flinching.¹⁷

... the work of stretcher-bearers — especially the regimental — of the AIF was, if anything, more deadly than that of the riflemen, and was recognised as such ... The system was unorthodox, inasmuch as it involved heavy loss of life in the medical and stretcher-bearing sections. But it probably saved a much greater loss, and its effect on the morale of the troops was distinct. An infantryman knew with certainty that, in the chance of a wound, if it were possible for brave men to reach him, he would not die unattended.¹⁸

3rd Field Ambulance command arrangements

15-25 When Howse landed, the stretcher-bearer sections were already ashore and, although the situation was not ideal for control, a chain of command was nevertheless in place. The bearer section Officers Commanding (OCs) worked directly to Howse at division headquarters. Under normal circumstances, Howse would have been responsible to the division's Assistant Adjutant and Quartermaster-General (AA&QMG)¹⁹, but the AA&QMG was evacuated to Egypt, and so Howse reported directly to Bridges. On 25 April, when Simpson landed with the other stretcher-bearers in his section, they were all commanded by Captain McWhae, but when McWhae was wounded on 27 April and evacuated the next day, Captain Fry assumed command of the bearer division.²⁰ Lieutenant Colonel Sutton did not land on Gallipoli until 29 April, when he resumed command of 3rd Field Ambulance. The section OCs then reported to Sutton, who in turn was responsible to Howse. This arrangement remained in place during May, except for the period 17–23 May, when Howse was absent aboard the hospital ship *Gascon* tending to the mortally wounded Major General Bridges. On 30 April, Fry was appointed as Acting Adjutant of 3rd Field Ambulance, and in this role he would coordinate and write nominations for honours and submit them to Howse.²¹

¹⁶ Bean, *The Story of Anzac*, p. 552.

¹⁷ *ibid.*, p. 553.

¹⁸ *ibid.*, p. 555.

¹⁹ Assistant Adjutant and Quartermaster-General was the senior staff officer on the Division HQ responsible for supply, transport, accommodation and personnel management.

²⁰ 'War Diary', 3rd Australian Field Ambulance, April 1915. AWM4, 26/46/4.

²¹ 'War Diary', 3rd Australian Field Ambulance, May 1915. AWM4, 26/46/5.

The campaign continues

- 15-26 In the week after the landing, casualties continued to mount. Turkish forces held the high ground at Baby 700 and 400 Plateau, and the Anzacs were unable to advance. Conversely, the Turks were unable to drive the Anzacs back into the sea. Rifle and machine-gun fire dominated the battlefield, cutting down the most determined assaults — while in the savage trench fighting, bomb and bayonet ruled. As the fighting wore on, the stretcher-bearers' work became continuous. By 5 May 1915 the Anzacs were left holding a slice of Turkey 1.5 kilometres from north to south, and 0.5 kilometres at its widest point. This position was held until the end of the campaign.²²

Simpson at Gallipoli

- 15-27 Over time, many accounts have emerged that described Simpson's conduct in the few weeks after the landing. Corporal Davidson said:

The first day Simpson carried with the rest of the bearers, but was missing the second day and reported by Sgt Hookway for being absent from his unit. He had got his little donkey and was doing good work; when this became known he was given a free hand and carried on independently. He worked mostly in Shrapnel Gully, and as we were also carrying from there we saw him daily. He came to the unit for clothes and boots but got his food mostly from the 22nd and 23rd Mountain Battery Indian mule train.²³

- 15-28 Gunner Sydney Loch²⁴ kept a diary during his time at Gallipoli. Shortly after returning to Australia he had the diary published as a book, *The straits impregnable*, under the pseudonym Sydney de Loghe. The book was banned shortly thereafter. In 2007 the book was published again, this time under the title *To hell and back: the banned account of Gallipoli*. In it, Loch says:

One Red Cross fellow with a donkey passed twice or thrice that day. 'The man with the donkey', as we called him, was becoming known to all; firing seemed not to worry him. On his donkey he would mount a man wounded in leg or foot and bring them down Monash or Shrapnel Valley to the dressing station on the beach.²⁵

- 15-29 In a letter to Simpson's sister, Miss Annie Kirkpatrick, in September 1915, Captain Fry described Simpson's conduct:

Your brother landed with us from the torpedo boat at daybreak on the 25th of April so taking part in the historic landing. He did excellent work during the day. He discovered a donkey in a deserted hut, took possession, and worked up and down a dangerous valley carrying wounded men to the beach on the donkey. This plan was a great success, so he continued day by day from morning till night, and became one of the best known men in the division ... The work your brother did was so exceptionally good.²⁶

22 Department of Veterans' Affairs (DVA), 'Gallipoli, 25 April 1915 – 8 January 1916', DVA, www.anzacsite.gov.au/2visiting/tgallipoli.html, viewed 25 June 2012.

23 Letter, AR Davidson to Major Treloar, 28 March 1938, AWM 417/020/035.

24 Frederick Sydney Loch, Service no. 827, 3rd Field Artillery Brigade, NAA: B2455, LOCH FREDERICK SYDNEY.

25 Sydney de Loghe, *To hell and back: the banned account of Gallipoli*, HarperCollins, Sydney, 2007, p. 114.

26 Letter, HK Fry to Miss Simpson Kirkpatrick, 2 September 1915, AWM 3DRL 3424.

- 15-30 Private William Robertson,²⁷ in a letter to Reverend Sir Irving Benson in 1950, recalled the actions of Simpson:
- I wish to pay my tribute to Pte Simpson whom I knew well on Gallipoli (better known to me as Murph). Being in the same section of the 3rd Field Amb. I saw his courageous help to the wounded which is now history. Many times we told him to be careful at that certain part of Shrapnel Gully but he was too brave to take any notice.²⁸
- 15-31 The official historian Charles Bean devoted a number of pages in his personal diary to Private Simpson, and in the official history wrote:
- One bearer was there whose name has become a tradition in Australia. A number of donkeys with Greek drivers had been landed on April 25th for water-carrying. The Greeks were soon deported, and after the first days the donkeys ceased carrying and fed idly in the gullies, till they gradually disappeared. Private Simpson, of the 3rd Australian Field Ambulance, was seized with the idea that one of these might be useful for moving men wounded in the leg. On the night of April 25th he annexed a donkey, and each day, and half of every night, he worked continuously between the head of Monash Valley and the Beach, his donkey carrying a brassard round its forehead and a wounded man on its back. Simpson escaped death so many times that he was completely fatalistic; the deadly sniping down the valley and the most furious shrapnel fire never stopped him. The colonel of his ambulance, recognising the value of his work, allowed him to carry on as a completely separate unit. He camped with his donkey at the Indian mule-camp, and had only to report once a day at the field ambulance. Presently he annexed a second donkey. On May 19th he went up the valley past the water-guard, where he generally had his breakfast, but it was not ready. 'Never mind,' he called. 'Get me a good dinner when I come back.' With two patients he was coming down the creek-bed, when he was hit through the heart, both the wounded men being wounded again. He had carried many scores of men down the valley, and had saved many lives at the cost of his own.²⁹
- 15-32 Colonel AG Butler, in the history of the Australian Army Medical Services of the First World War, singled out Simpson for specific mention:
- A stretcher bearer of the 3rd Field Ambulance, of quiet disposition, enlisted as 'Simpson', had obtained a small donkey, and with this animal (known as 'Duffy') he for many hours daily traversed the valley, bringing down in this way an extraordinary number of cases ... On 19 May, at the same spot as General Bridges, Simpson was shot through the heart. No cross of bronze has marked his Valour, but in the memory of his brief service he gained a monument more enduring. 'Simpson' has been selected for mention because the quality of his courage and the nature of the service in which he lost his life are typical of those demanded of the stretcher bearer, who must carry his case undeviatingly, without haste but without rest, through long periods of exacting and dangerous toil. Conduct such as his, and the high standard set from the first in the rescue of wounded, gained for the stretcher bearers what they desired - not a halo of sentimental eulogy, but the confidence of the men who fought and comradeship on terms of equality with them.³⁰

27 Private William Robertson, C Section 3rd Field Amb., Service no. 239, NAA: B2455, ROBERTSON WILLIAM

28 Letter, William Robertson to Rev. Irving Benson, 25 April 1950, AWM 419/9/22, PR83/69.

29 Bean, *The Story of Anzac*, vol. 1, pp. 44–45; and 'Diary, May – June 1915', AWM38, 3DRL606/8/1.

30 Butler, *The Australian Army Medical Services in the War of 1914–1918*, vol. 1, p. 159.

Death of Private Simpson

15-33 At Gallipoli, in the early hours of 19 May 1915, the Turks mounted a major offensive to try to drive the Anzacs from the peninsula. By the end of the unsuccessful attack, more than 3000 Turks were dead, lying in view of the Anzac trenches, while Anzac casualties numbered about 100 killed and 500 wounded.³¹ The battle resulted in Australia's first VC of the war, that awarded to Lance Corporal Albert Jacka, whose citation reads:

For most conspicuous bravery on the night of the 19th – 20th May 1915 at 'Courtney's Post', Gallipoli Peninsula. Lance-Corporal Jacka, while holding a portion of our trench with four other men, was heavily attacked. When all except himself were killed or wounded, the trench was rushed and occupied by seven Turks. Lance-Corporal Jacka at once most gallantly attacked them single-handed, and killed the whole party, five by rifle and two with the bayonet.³²

15-34 The 3rd Field Ambulance diary noted that because of the enemy attack, Captain Fry, with six squads of bearers, proceeded to Walker's Road Regimental Aid Post at 0500 and cleared the station of wounded. Heavy machine-gun fire in Shrapnel Valley caused three patients to be rewounded in transit and three casualties among the bearers. One of those was Simpson. His death was noted in the diary by Major Graham Dixon, who, in the absence of Sutton, was acting CO. Sutton was acting ADMS while Howse was away from Gallipoli, accompanying the wounded General Bridges to Alexandria. Dixon reported that:

No. 202 Pte J Simpson shot thru heart, killed, whilst escorting patient ... The attention of the ADMS was drawn to the excellence of the work performed by Pte Simpson continuously since landing.³³

15-35 Private Arthur Adams, C Section, 3rd Field Ambulance, also noted Simpson's death in his diary:

19 May. Jack Simpson killed while leading donk and patient ... Bury J Simpson in evening large attendance.³⁴

15-36 On 20 May 1915, Colonel John Monash, Commander 4th Brigade, wrote to the Headquarters of the NZ&A Division as follows:

I desire to bring under special notice, for favour of transmission to the proper authority, the case of Private Simpson, stated to belong to C Section of the 3rd Field Ambulance. This man has been working in this valley since 26 April ... collecting the wounded, and carrying them to the dressing-stations. He had a small donkey which he used to carry all cases unable to walk.

Private Simpson and his little beast earned the admiration of everyone at the upper end of the valley. They worked all day and night throughout the whole period since the landing, and the help rendered to the wounded was invaluable. Simpson knew no fear and moved unconcernedly amid shrapnel and rifle fire, steadily carrying out his self-imposed task day by day, and he frequently earned the applause of the personnel for his many fearless rescues of wounded men from areas subject to rifle and shrapnel fire.

31 *Third Supplement to the London Gazette*, no. 29303, 17 September 1915, p. 9315.

32 *Supplement to the London Gazette*, no. 29240, 23 July 1915, p. 7279.

33 'War Diary', 3rd Australian Field Ambulance, May 1915, p. 9, AWM4, 26/46/5.

34 Diary of Private Arthur James Adams, Service no. 78, AWM 1DRL/0004.

Simpson and his donkey were yesterday killed by a shrapnel shell, and enquiry then elicited that he belonged to none of the AMC units with this brigade, but had become separated from his own unit, and had carried out his perilous work on his own initiative.³⁵

Monash and his brigade had been defending the head of Monash Valley, which included Courtney's, Quinn's and Pope's Posts.

Eyewitness and other accounts of Simpson's actions

15-37 There are many witness accounts of Simpson's conduct, some of which are included in earlier paragraphs. The Tribunal was, however, unable to find any witness accounts of a specific act of valour, like that describing Jacka's action, which could single out Simpson's bravery from the other stretcher-bearers in the Field Ambulance. There are recollections from those who were interviewed by Fry, but no evidence of their actual statements could be found.

Chain of command for honours and awards

- 15-38 In Simpson's case, the authorised chain of command for the nomination and recommendation of operational honours, in the period of his service at Gallipoli was as follows:
- Commanding Officer 3rd Field Ambulance (Sutton) in the normal course of events would initiate recommendations for honours. However, at Gallipoli, Sutton did not land until 29 April, so ADMS (Howse) as the senior medical officer ashore varied the process. OC C Section and later Acting Adjutant (Fry) would coordinate recommendations and submit them direct to Howse. This arrangement remained in place after Sutton's landing.
 - The recommendations would be considered by ADMS 1st Australian Division (Howse).
 - If recommendations were supported by Howse, they would be forwarded to the Commander 1st Australian Division (Bridges 25 April – 15 May; Walker 15 May – 24 June).
 - If endorsed, recommendations would be forwarded to Anzac Corps Headquarters (Birdwood) for review.
 - If endorsed, recommendations would be forwarded to the General Officer Commanding the Mediterranean Expeditionary Force (Hamilton) for review.
 - The recommendation would be forwarded to the Secretary of State for War (Kitchener) for approval and gazetting in the case of Mentions in Despatches (MID). In the case of a higher level gallantry honour it would be forwarded through the Secretary of State for War to the King, for approval and gazetting.

35 FM Cutlack (ed.), *War letters of General Monash*, Angus & Robertson, Sydney, 1935, pp. 37–38.

Honours and awards made for the 3rd Field Ambulance to 19 May 1915

15-39 On 14 May 1915, Howse signed a report on the actions of medical personnel from the day of the landing to 1 May 1915. He submitted the report to 1st Division Headquarters, where it was annotated the next day as having been seen by Bridges. In the report, Howse detailed movements and described actions undertaken, including the landing of officers and men on the days following 25 April. Howse also drew attention to the actions of a few specific personnel over the period 25 April to 1 May. He wrote:

I cannot speak too highly of the work carried out by the Bearer Sub-divisions of Nos 1, 2 and 3 Field Ambulances. They worked incessantly for 48 hours and on many occasions assisted the Regimental Stretcher Bearers in removing wounded from the firing lines ... The following names are submitted for consideration for Mention in Despatches as representative of the work done by personnel of AMC, 1st Australian Division, and attached:

...

No 3 Field Ambulance

	Captain	H. K. Fry
No 9	Sergeant	Gunn, W.
167	Sergeant	Hookway, O.R.
151	L. Corp	Farnham
178	Private	Rosser C.H.G.
2250	Private	Watts, H.T.
202	Private	Simpson, J. ³⁶

15-40 Howse later added Captain McWhae to the list for the period from 25 April to 1 May, making a total of eight honours to be recommended for members of 3rd Field Ambulance. They were all recognised with MIDs, including the MID awarded to Simpson.³⁷ In that same period, there were no VCs recommended for any of the 17,249³⁸ Australian soldiers who had landed and fought at Gallipoli, with either the 1st Division or 4th Brigade. That would not change until 19 May, when Jacka's action with 14th Battalion³⁹ AIF would see him as the first Australian to be awarded the VC for the First World War.⁴⁰

15-41 On 2 June 1915, in a new submission, five members of 1st and 2nd Field Ambulance and 1st Australian Casualty Clearing Station, along with three members of 3rd Field Ambulance, were recommended for recognition by Howse. The three were Captain McWhae (wounded 27 April), Lance Corporal Farnham

36 Letter, ADMS (Howse) dated 14 May 1915, AWM25, 367/33.

37 *Supplement to the London Gazette*, no. 29354, 5 November 1915, p. 11003, NAA: B2455, Service Record, Simpson, John,

38 From 25 April – 1 May 1915, 1st Division landed 13,233 (all ranks) (including 117 from 3rd Field Ambulance) and 4th Brigade landed 4,016 (all ranks) at Gallipoli. Bean, *The Story of Anzac*, p. 282.

39 14th Battalion was a unit of 4th Brigade, which formed part of the NZ&A Division.

40 *Supplement to the London Gazette*, no. 29240, 23 July 1915, p. 7279.

and Private Rosser (all had previously been recommended for MIDs for the period 25 April to 1 May). Those three recommendations resulted in each being awarded the Distinguished Conduct Medal (DCM). The recommendations for McWhae and Rosser were written and signed by Captain Fry and the three, including Farnham, were endorsed by Howse.⁴¹ In total, for the period 25 April until Simpson's death on 19 May, 3rd Field Ambulance members were awarded three DCMs and eight MIDs.

Other recognition for Simpson

Simpson becomes known to the community

- 15-42 Since his death in May 1915, much has been written about Simpson and his donkey or donkeys, and their deeds. From as early as July 1915, newspapers began to carry articles on the feats of the stretcher-bearers and, in particular, Private John Simpson. On 22 July 1915, *The Mercury* published an article by CEW Bean, dated 12 June, which detailed the exploits of Simpson and the stretcher-bearers.⁴²
- 15-43 After the initial articles by the official correspondents (Bean and Ellis Ashmead-Bartlett) about the exploits of the Australians landing at Gallipoli, soldiers' stories began to be printed in newspapers. For example, in *The Advertiser* on 11 August 1915, Private Herriot provided descriptions of 'events from the view-point of the rank-and-file'.⁴³ A short section of this article was devoted to the deeds of Simpson and his donkey, but as Herriot put it, 'I heard of him from one of the 3rd Brigade'. By this time, Simpson had been dead for nearly three months.
- 15-44 *The West Australian* claimed Simpson as a Western Australian in September 1915,⁴⁴ and by the time the first Anzac Day was held in 1916, a large amount of space was devoted to the Simpson story. In England, Simpson's mother and sister were invited to the first Anzac Day commemorative service at Westminster Abbey.⁴⁵
- 15-45 As early as 1916, the Simpson story became part of the school curriculum in Australia. The third edition of EC Buley's *Glorious deeds of the Australasians in the Great War*, released in December 1915, was adopted as a school text in Victoria, as was his other book, *Child's history of Anzac*. Peter Cochrane, in *Simpson and the donkey: the making of the legend*, says that Buley, in the foreword of *Glorious deeds*, wrote that he would resist the temptation to identify the doers of the many deeds of remarkable bravery he had encountered in conversation, but that there would be one exception: Simpson.⁴⁶

41 In its research, the Tribunal could not locate the initial recommendation for Farnham's honour.

42 CEW Bean, 'The Australian Army: The stretcher-bearers: Magnificent work: The man with the donkey', *The Mercury*, 22 July 1915, p. 6.

43 HR Herriot, 'The mad reckless charge; Soldier's story from the trenches; Wonderful heroism', *The Advertiser*, 11 August 1915, p. 8.

44 'Saving the wounded; Trudged daily into death's valley; Tribute to a Western Australian', *The West Australian*, 28 September 1915, p. 7.

45 A copy of the service booklet, including a note from Miss Kirkpatrick, is among the 'Papers of Kirkpatrick, John Simpson (Private)', AWM 3DRL 3424.

46 P Cochrane, *Simpson and the donkey: the making of a legend*, Melbourne University Press, Portland, OR, 1992, p. 58.

Simpson is commemorated

- 15-46 In October 1933, *The Argus* (a Melbourne newspaper) suggested to readers that 'once more demand has arisen that Simpson should be commemorated' and 'to enable expression to be given to this demand' the newspaper decided to offer a prize for a design for the 'most fitting monument to Private Simpson'.⁴⁷ In conjunction with this prize, the Red Cross Society of Victoria decided to launch an appeal for funds for the memorial. *The Argus* reported that 'members of the society, as do many other people, feel that Simpson's quiet heroism typified the spirit of the Anzacs and that it should be given some permanent expression'.⁴⁸ Over the next month or so the contributions added up and the story gained national publicity. In total over A£400 was raised. During that time many who 'knew' Simpson took the opportunity to tell of their memories and the stories of his exploits. On 20 June 1936, the Governor of Victoria, Lord Huntingfield, unveiled the memorial to Simpson, 'a great Australian hero' who was 'an example of courage, self-sacrifice, and patriotism' and that this was a memorial to 'one who had lived and died for his country'.⁴⁹
- 15-47 In 1965, to commemorate the 50th anniversary of the landing on Gallipoli, a set of stamps depicting the Man with the Donkey, was issued by the Postmaster-General. Also in 1965, *The man with the donkey: John Simpson Kirkpatrick — The good samaritan of Gallipoli*, a book by the Reverend Sir C Irving Benson, was published.⁵⁰ During the course of writing the book, Sir Irving gained access, courtesy of Mrs Annie Simpson Pearson (Simpson's sister), to letters written by Simpson to his mother and herself, and many other documents retained by the family. These papers were later donated to the Australian War Memorial.⁵¹
- 15-48 A man with a donkey is depicted on the Anzac Commemorative Medallion, which was issued from 1967 to commemorate the 50th anniversary of the Gallipoli landings. It was awarded to surviving members of the AIF who had served on the Gallipoli Peninsula at any time during the period from 25 April 1915 to the date of final evacuation in January 1916. Next-of-kin, and other persons, are entitled to receive the medallion on behalf of their relatives if the medallion has not been issued.⁵²
- 15-49 On 16 May 1967 the 'first' medallion was presented to Simpson's sister by Lord Casey, Governor-General of Australia, at a ceremony at Australia House in London. In his address to the gathering, Casey said to her:
- I met your brother on many occasions at Gallipoli, where I was Orderly Officer to General Bridges commanding the 1st Australian Division, and I

47 'The man with the donkey, Demand for monument', *The Argus*, 19 October 1933, p. 6.

48 'The man with the donkey; Proposed monument; Contributions begun', *The Argus*, 21 October 1933, p. 24.

49 'Vice Regal' *The Argus*, 22 June 1936, p. 8.

50 Rev. Sir Irving Benson, *The man with the donkey: John Simpson Kirkpatrick — the good samaritan of Gallipoli*, Hodder and Stoughton, London, 1965.

51 Letters of Rev. Sir Irving Benson, AWM 419/9/22, PR83/69.

52 Department of Defence, Defence Support Group, 'Defence honours & awards', Defence, 2012, www.defence.gov.au/medals, viewed 2 August 2012.

realise very well from first hand knowledge what a very great and selfless service he performed to so many wounded men on Gallipoli.⁵³

Other recognition for Simpson

15-50

Simpson has also been widely recognised in various ways, some of which are listed as follows:

- a. Mascot. The Royal Australian Army Medical Corps has chosen a donkey as its corps mascot in remembrance of the heroic humane deeds of Private John Simpson Kirkpatrick.
- b. Statues.
 - Wallace Anderson, bronze statue, Shrine of Remembrance, Melbourne, 1935.
 - Peter Corlett, bronze sculpture, Memorial Sculpture Gardens, Australian War Memorial, 1988.
 - Leslie Bowles, bronze sculpture, Australian War Memorial Collection.
 - William Olley, sculpture, Ocean Road, South Shields, Tyneside, 1988.
 - Robert Hannaford, sculpture, Angas Gardens at North Adelaide, unveiled in February 2012.
 - John Brady, statue, carved from the stump of a tree, Lakes Entrance, Victoria.
- c. Medals on display at the Australian War Memorial.
- d. Stamps. 50th Anniversary of the landings at Gallipoli — commemorative stamps issued in 1965.
- e. Coins and notes.
 - Depicted on \$100 note, designed by Bruce Stewart and issued in 1996.
 - \$5 commemorative coin — issued in 1990 to commemorate the 75th anniversary of the landing on Gallipoli.
- f. Paintings.
 - Watercolour on paper, *The Man with the Donkey*, Horace Moore-Jones, 1917.⁵⁴
 - Oil on linen, *The Man with the Donkey, Anzac 1915*, George Benson, 1919.
 - Oil, feather on hardboard, *Untitled IV* [Simpson and his Donkey], Clifton Pugh, 1990.



Anzac Commemorative Medallion

⁵³ Remarks by Lord Casey in presenting the Anzac Commemorative Medallion to Mrs Simpson Pearson, NAA A3211, 1971/2712. Presentation to the Australian War Memorial of Medals and War Relics Belonging to the Late Private John Simpson Kirkpatrick (The man with the donkey).

⁵⁴ This painting was identified in 1934 by surviving members of C Section, 3rd Field Ambulance, in a letter to the Western Australian State President of the RSL as not being John Simpson. Mr Richard Henderson, from New Zealand, later identified the man in the painting as himself.

g. Films and documentaries.

- *Murphy of Anzac*, a silent film, directed by JE Matthews, Fraser Film Release and Photographic Company, 1916.
- 'Private John Simpson', one of 13 episodes of the *Australians*, television documentary, presenter Michael Willesee, Film Australia, Transmedia, Roadshow Coote & Carroll, Lindfield NSW, 1987.
- 'An ordinary hero: the story of John Simpson Kirkpatrick', written, produced and directed by Ed Skelding, Australia: SBS Television, 2001.

h. Plays.

- *Simpson J. 202*, a play, written by Richard Benyon, Currency Press, Sydney, 1991.
- *Three Weeks in Spring: The Gallipoli Story*, a musical, writer/creator Ian Gerrard, composer Russell Tredinnick, 2011.
- *The Man and the Donkey*, a play, written by Valerie Laws, directed by Jackie Fielding, staged at Customs House, South Shields in 2011.

i. Competitions.

- The Simpson Prize – A national essay writing competition for years 9 and 10 students sponsored by the Australian Government. Winning students and two teachers travel to Turkey or the Western Front in April for Anzac Day services.⁵⁵
- Returned & Services League of Australia (RSL) Anzac of the Year Awards. To recognise the efforts and achievements of up to seven Australians who have given service to their fellow Australians and to the community in a positive, selfless and compassionate manner. The awards may be awarded to individuals or to groups who have demonstrated the spirit of comradeship and selfless service embodied in the tradition of Anzac. The Awards are bronze medallions some four inches in diameter, depicting Simpson and his donkey, presented in a specially designed presentation case.

Recognition for Simpson's donkey(s)

15-51 Murphy, the best known of Simpson's donkeys, was posthumously awarded the RSPCA Australia Purple Cross Award by the then Deputy Prime Minister, Tim Fischer, at a ceremony at the Australian War Memorial on 19 May 1997. The award was made to Murphy as a representative of all the donkeys used by John Simpson Kirkpatrick for their exceptional performance in helping humans while under continual fire at Gallipoli during the First World War.⁵⁶

⁵⁵ Details of the competition can be found at www.simpsonprize.org.

⁵⁶ Royal Society for the Protection of Cruelty to Animals (RSPCA), 'RSPCA Purple Cross Award', RSPCA, www.rspca.org.au/what-we-do/awards/rspca-purple-cross-award.html, viewed 1 August 2012.

Arguments put forward in submissions for the award of the Victoria Cross or other recognition for Simpson

Arguments put forward in submissions for the award

15-52 Several submitters made claims in a number of categories, supporting the award of the VC or other recognition for Private Simpson, as follows:

- Simpson was recommended for a VC
 - It was claimed that Simpson had been recommended for a VC on 3 June 1915 and since he has never been recognised in the manner intended, it was appropriate now to respect the judgements of the Commanding Officer of the time and award Simpson the VC (Submission 38 and Hall oral submission Canberra 14 March 2012).
 - Captain Fry's diary entries show that he submitted a VC recommendation for Simpson to Howse a month after Simpson had been killed, and two weeks after the witnesses had written sworn supporting statements. That copies of those recommendations have not survived does not mean they were not written. Many documents from the Gallipoli campaign were lost. There is evidence that during the evacuation in December 1915, 3rd Field Ambulance documents were dumped into the sea (Submissions 116 and 116A, 117, and Malcolm oral submission Perth 15 February 2012).
 - There is a misconception that Simpson was recommended for the VC but was only rewarded with an MID. His name was put forward to be recommended for the MID on 1 May, specifically for using his initiative to transport wounded men with a donkey from the day after landing at Gallipoli. Following his death on 19 May, the attempt to have him awarded a posthumous VC was a completely separate recommendation (Submission 117).
 - Sutton's diary entry on 24 May: 'I hope he will be awarded the DCM', and 1 June 'I think we'll get a VC for poor Simpson' confirm that there must have been a recommendation for a VC submitted (Submission 117).
 - A submitter noted that Monash wrote a recommendation for Simpson. It was said that it is doubtful that Monash would spend his valuable time writing a 'lowly' MID recommendation. But at the same time, the submitter acknowledged that it is not a recommendation for a VC either (Submission 117).
- A witness letter confirms that Simpson's actions had been seen and that he deserved a VC (Submission 53).
- The process failed
 - The VC was refused on a technicality, because of a mistaken application and that one signal act of valour could not be identified in accordance with the regulations. Rules for eligibility were changed to put more emphasis on those who actually conducted an act of valour in the presence of the enemy. That might have worked against a recommendation for Simpson at the time (Submissions 38 and 193, also

discussed in parliamentary debates within the Senate and the House of Representatives⁵⁷).

- Sutton was bypassed in the chain of command. Captain Fry was tasked by Howse to write the 3rd Field Ambulance's operational report and make bravery recommendations, thus bypassing Sutton in the chain of command. Sutton wrote in his diary 'surely my officers should report to me and I should pass it on' (Submissions 116 and 116A).
- There is evidence in Fry's diary that gives rise to speculation that it is possible that Simpson's VC was denied at some level before the submission was even considered. It is possible that Howse did not send the recommendation through the chain of command (Malcolm oral submission Perth 15 February 2012).
- There have been claims made that there was possibly a conflict of interest evident in the process. It has been said that Howse denied Simpson a VC because he (Howse) wanted to be the only Medical Corps member with the VC (Malcolm oral submission Perth 15 February 2012).
- Community support for recognising Simpson with a VC is very strong
 - One submitter claimed that there is 'enormous support from within the community, having already submitted to Parliament, petitions containing something like 6000 signatures' in support of Simpson (Submission 38).⁵⁸
 - As an example of community support, Western Australian schoolchildren submitted letters all supporting Simpson (Submission 67).
- Simpson is the personification of Anzac and what it means to be Australian. As such he should be honoured in the highest possible way (Submission 38).
- Simpson has already been recognised with the award of an MID. This should not preclude consideration for a VC.
 - There is a precedent established that others at the same time were recognised with two awards for the same action. As an example, 'other 3rd Field Ambulance soldiers [Farnham and Rosser] were awarded MIDs and Distinguished Conduct Medals for the same period' (Submissions 116 and 116A, and Malcolm oral submission Perth 15 February 2012).
 - Farnham and Rosser were awarded the DCM and MID for the same actions. This begs the question; why was Simpson's MID not upgraded to a DCM? (Submission 117).

Arguments put forward in submissions against the award

15-53 Several submitters did not support the award of the VC or other recognition to Private Simpson. These are summarised as follows:

- All members of the Field Ambulance were equals; Simpson was just doing his job
 - While Simpson became known for his donkey exploits, the rest of the stretcher-bearers were undertaking equally dangerous rescue and

⁵⁷ CPD, H of R, 30 October 2000 p. 21623; and CPD, Senate, 8 March 2001 p. 22817

⁵⁸ CPD, H of R, 15 June 2005 p. 214

recovery of fallen comrades. The field ambulance soldiers all performed above and beyond the call of duty under the most deplorable conditions. It is not appropriate to single out Simpson who was just doing his job (Submission 1).

- Simpson's conduct was no more gallant than the other stretcher-bearers in his unit (Submission 60 and Brogan oral submission Melbourne 15 December 2011).
- Much of the story of Simpson is based on myth and hearsay. This should not cloud the issue and no further or greater honour should be bestowed on one individual (Submission 1).
- Simpson has had enough recognition bestowed upon him (Submission 12).
 - 'John Simpson Kirkpatrick stands in the category of his own as a national icon, placing him beyond any award, retrospective or otherwise'(Submission 234).
- The accuracy of diary entries that are often quoted cannot be relied on because they were not made at the time of the actions. 'Fry's [diary entries] were made from memory ... in late 1918 or early 1919, almost four years after the event.' 'Sutton's [diary entries were also] written from memory, years after the event [and do not] in any way constitute an official recommendation for the VC.' (Submission 99 and Wilson oral submission Canberra 1 December 2011).⁵⁹
- Simpson has already been properly recognised with the award of MID for his action. There should only be one award for one action (Submission 38).⁶⁰
- Awarding a VC to Simpson would create an injustice to others. There are at least 70 instances on record in the Australian War Memorial of soldiers who were nominated for VCs but were not approved. There is no nomination for Simpson and to award him a VC would be an injustice to those other 70 soldiers (Wilson oral submission Canberra 1 December 2011).
- Monash did not recommend Simpson for a VC. Monash who 'was known for his florid verbiage' was not in Simpson's chain of command for consideration of honours. His statement was bringing Simpson's conduct 'to the attention of the competent authority'. (Wilson oral submission Canberra 1 December 2011)

Tribunal review of the award's process

- 15-54 In considering the case for a possible award of the VC for Private Simpson, the Tribunal first conducted a process review as described in paragraph 8-44 of the Report.
- 15-55 The authorised process at the time for nominations for honours is outlined at paragraph 15-38. It was put to the Tribunal by a number of submitters that in Simpson's case the process failed for various reasons. It was generally acknowledged that Simpson had been recognised for his service up to 1 May with an MID. However, views were expressed that Simpson was also recommended

⁵⁹ Also Graham Wilson, 'The donkey vote: A VC for Simpson — the case against', *Sabretache* vol. 47, no. 4, December 2006 p. 32.

⁶⁰ *CPD*, H of R, 30 October 2000, p. 21621 (Ms Jill Hall).

for a VC in the weeks following his death. The Tribunal decided to review each of the claims to identify any anomalies in the process that could have impacted on Simpson's consideration. These claims are detailed in the following paragraphs.

Process for honours recommendations

- 15-56 Some submitters claimed that Howse had removed Sutton from the chain for honours recommendations, which introduced the possibility of an injustice in the process.
- 15-57 In December 1914, while in Egypt, Howse told Sutton 'that honours would not be distributed in the haphazard way they were in South Africa. They would all go through the AMC [Army Medical Corps] Headquarters'.⁶¹ In effect, Howse was combining the honours recommendation chain with the technical command chain for medical units in 1st Division. This did not of itself remove Sutton from the chain, but instead placed Howse, the senior medical corps officer in the division, into the recommendation chain.
- 15-58 Sutton landed at Gallipoli on 29 April. On 1 May, Howse was beginning to develop a report on operations and recommendations for honours for the period 25 April to 1 May. Sutton, having not been present in that period, was told by Howse that Fry was to report on the actions of the Bearer Division and make nominations for recognition directly to Howse. Sutton was told by Howse that he was not required to contribute to the report.⁶² Sutton was not happy with this arrangement, but it remained in place.
- 15-59 There was no evidence presented that would lead to a conclusion that, by Sutton not participating in the chain of recommendation, there was any disadvantage to Simpson. While Sutton was dissatisfied with the arrangement, and made comments to that effect in his diary, neither he nor Fry made any comments that this had caused any injustice to Simpson or others.

Recommendation for an MID

- 15-60 While it was generally understood that Simpson had been awarded an MID for his service at Gallipoli, the Tribunal's process review revealed that Howse intervened to ensure the honour recommendation, at one stage overlooked, was eventually awarded.
- 15-61 In his report on operations for the period 25 April – 1 May, submitted as a letter on 14 May, Howse recommended that seven members of 3rd Field Ambulance be considered 'for Mention in Dispatches, as representative of the work done [by all members]'.⁶³ Simpson and six others were named. Howse did not use the authorised form for honours nominations (Army Form W.3121) at that stage. This was not unusual. His recommendation letter was transcribed onto the authorised form by the staff at division headquarters, so that it could be submitted to corps

⁶¹ Diary of Colonel AG Sutton, 30 December 1914, AWM 2DRL/1227.

⁶² 'War Diary', 3rd Australian Field Ambulance, April 1915, AWM4, 26/46/4.

⁶³ Letter, ADMS (Howse) dated 14 May 1915, Messages and Signals 1st Australian Division – General Staff May 1915, part 2 AWM25 367/83,.

headquarters for consideration by Birdwood. Included on the form, with the seven names, was the following note:

The late General Officer Commanding [Bridges] referred in his previous despatch to the conspicuous gallantry of the AAMC [Australian Army Medical Corps]. The names hereon were submitted by the ADMS who in the circumstances had great difficulty in choosing from the many men whose courage and devotion were exemplary.⁶⁴

- 15-62 On 21 May 1915 a report on operations was sent from corps headquarters to General Headquarters Mediterranean Expeditionary Forces (Hamilton). It included a number of recommendations for honours, but not those submitted by Howse on 14 May.⁶⁵ By 1 June, Howse had become aware that none of his recommendations had been approved, so he sought to have the apparent injustice rectified by acting General Officer Commanding 1st Division (Walker). It was found that the original recommendations had been mislaid at corps headquarters. Howse then resubmitted the original seven recommendations to division headquarters, and also added Captain McWhae's name to the list. The eight names were promulgated in corps routine orders on 29 June 1915.⁶⁶ Simpson's MID for his contribution in the period 25 April to 1 May 1915 was officially gazetted on 5 November 1915.⁶⁷
- 15-63 Immediately after Howse had corrected the oversight with the MID recommendations, he tasked Fry with raising nominations for individual acts of gallantry. This explains Fry's diary entry on 2 June when he says 'Called by Howse in afternoon ... McWhae, Farnham and Rosser (for mention)'.⁶⁸ Fry wrote and signed the specific individual descriptions of the actions of both McWhae and Rosser. Although the Tribunal could not locate the initial nomination for Farnham, he was included by Howse in the recommendations. Howse also added recommendations for another five men from other AAMC units of 1st Division. Simpson was not on that list. On 4 June, Birdwood recommended that all eight be awarded the DCM, which is what transpired.
- 15-64 The Tribunal concluded that Howse's role in the process was constructive. His intervention ensured that the recommendations for MIDs were approved and awarded. He also made separate specific recommendations for individual gallantry that resulted in awards of the DCM. There was no evidence presented that would indicate any injustice arose from Sutton not participating, or that there was any failure in the process as a result.

Recommendation for Victoria Cross

- 15-65 Some submitters claimed that a recommendation to award a VC to Simpson was made, but, for a number of reasons, was not considered. This proposition was

64 Recommendation, AWM28 2/368; file can also be accessed from the Australian War Memorial website, www.awm.gov.au/collection/records/awm28/2/awm28-2-46part1-0036.pdf, viewed 1 June 2011.

65 'War Diary', Administrative staff, Headquarters Australian and New Zealand Army Corps, May 1915, AWM4, 1/28/6.

66 'War Diary', 3rd Australian Field Ambulance, July 1915, AWM4, 26/46/7.

67 *Supplement to the London Gazette*, no. 29354, 5 November 1915, p. 11003.

68 Butler Collection, [Personal narratives:] Lieutenant Colonel HK [Henry Kenneth] Fry, DSO, BSc MBBS DPO (Oxon), AWM41 2/7/15.

based on entries in the diaries of Sutton and Fry, and diaries of those who had provided statements to Fry.

- 15-66 In late April 1915, Fry noted that Simpson had shown initiative and was working 'from early morning till night'.⁶⁹ Other than his inclusion by Howse in the May report for an MID, Simpson was not otherwise referred to in either Sutton's, Fry's or the unit diaries prior to his death on 19 May. Some submitters claimed that Simpson was gallant all the time and no single act was necessarily evident. The Tribunal found no records of any acts of gallantry that can be attributed specifically to Simpson that might raise his conduct significantly above the actions of the many other soldiers present at Gallipoli, and, therefore, lead to a conclusion that he should have been awarded a VC.
- 15-67 As described at paragraphs 15-33 to 15-36, in the few days after Simpson's death on 19 May, a number of descriptions arose of the nature of the work he undertook and the dangers that were present. The evidence available points to the same circumstances applying to all soldiers on Gallipoli. On 24 May, Sutton wrote in his diary that he had sent in a report about Simpson being killed, hoping that Simpson would be 'awarded the DCM'. This does not constitute a VC recommendation, nor was it possible for Simpson to be awarded the DCM because it could not be awarded posthumously. Some have suggested that this notation in fact indicated that Sutton was not well versed at this early stage of the campaign in the regulations governing the Imperial honours system.
- 15-68 On 1 June Sutton wrote that 'I think we will get a VC for poor Simpson'. There is no evidence to indicate what moved Sutton to make this comment or what he may have done to progress his intention. Around the same time, Fry was gathering information for Howse's report. Fry wrote on 3 June that he saw Howse '... re Simpson & Goldsmith. [Simpson for V.C.] Adams, Sharples, Jeffries & Conrick to give evidence'.⁷⁰ This comment is consistent with the view that either Fry, Howse or both might have been considering nominating Simpson for a VC and that a case would need to be built and supporting witness statements gathered. It seems that Sutton was also assisting in the effort. On 4 June, Sutton wrote: 'I have been writing up poor Simpson's case with a view to getting some honour for him. It is difficult to get evidence of any one act to justify the V.C. the fact is he did so many'.⁷¹ Also on 4 June, Fry wrote: 'Adams & Sharples evidence (re Simpson) in morning. Afternoon Jeffries. Saw ADMS — soft futile words'.⁷² Private Arthur Adams also confirmed that he wrote a statement concerning Simpson.⁷³ It is difficult to determine what Fry might have meant by the phrase 'soft futile words' but there was no further action or entries made regarding Simpson until 18 June when Fry wrote that he had 'finally sent in Simpson's recommendation'.⁷⁴

69 'War Diary', 3rd Australian Field Ambulance, April 1915, p. 14, AWM4, 26/46/4.

70 Major Frederick Goldsmith; Arthur J Adams, Service no. 78, C Section, 3rd Fld Amb; Samuel Sharples, Service no. 168, C Section, 3rd Fld Amb; Charles Frederick Jeffries, Service no. 1238; and Captain Horatio Victor Patrick Conrick.

71 'War Diary', 3rd Australian Field Ambulance, June 1915, AWM4, 26/46/6.

72 Butler Collection, [Personal narratives:] Lieutenant Colonel HK [Henry Kenneth] Fry, DSO, BSc, MBBS, DPO, AWM41, 2/7/15.

73 Diary of Private Arthur James Adams, Service no. 78, AWM 1DRL/0004.

74 Diary of Captain H Kenneth Fry, Public Library of South Australia Archives: PRG 187, p. 40.

- 15-69 This was a relatively long period in which little appears to have been done to progress a nomination for Simpson. It is of note that earlier in June, Fry had written the individual gallantry nominations for McWhae and Rosser and those were not similarly delayed. It could reasonably be concluded that the 'soft futile words' might have described Howse's hesitancy to support a nomination, on the basis of the descriptions of Simpson's actions used by Fry, when compared with the nature of the evidence and descriptions that would be necessary to ensure the approval of a VC by higher authorities. For example, the Tribunal examined the descriptions of Jacka's VC recommendation (see paragraph 15-33), written at that time, and concluded that it was unlikely a similar construction for Simpson could be made for an action in the presence of the enemy.
- 15-70 None of the available reports, letters such as that from Monash⁷⁵ (which was not a VC recommendation) or anecdotes reveal any material that could be used to describe Simpson's actions to the standard required for a VC recommendation. Nevertheless, on the basis of his 18 June diary entry, it seems that Fry submitted some type of nomination to Howse. There was no evidence seen by the Tribunal that any nomination, if it existed, was ever proceeded with.
- 15-71 Additionally, it is clear from the diaries that Sutton knew on 10 July (and since the notification was in routine orders, Fry would also have known) that Simpson was to be awarded an MID and, on 18 July, that Farnham and Rosser were to be awarded the DCM.⁷⁶ There are no diary entries at that time expressing dissatisfaction or any criticism of Simpson's level of recognition, or any further mention of a VC recommendation.

Victoria Cross recommendation was submitted but not processed

- 15-72 Some submitters claimed that to not proceed with Fry's nomination represented an injustice. To determine whether that might be the case, the Tribunal referred to the regulations for the VC as discussed in Part 1 of this Report. Applying those considerations to Simpson's case, whether or not Captain Fry submitted a nomination with witness statements to Howse, it remains that only Howse could initiate a recommendation for any honour (including the VC), for AAMC personnel in 1st Division. Fry could only provide Howse with draft nominations and evidence, and suggest that Howse initiate a recommendation for Simpson to be awarded a VC. Even then, that recommendation would only be the start of a very rigorous process before an award was approved. In its research, the Tribunal examined the records of those many Australians in the First World War who had been recommended for the VC but were not approved. In the case of Private Lancaster in 1918, it was said in a letter of explanation on the file that, although a CO may make a recommendation for a VC, that recommendation is not of itself authority for the issue of any particular decoration, but merely a suggestion to the higher command with whom the decision rests.⁷⁷

⁷⁵ Monash, as Commander 4th Brigade, was not a part of Simpson's chain for honours recommendations. The phrase in his letter 'I desire to bring under special notice, for the favour of transmission to the proper authority' confirms this.

⁷⁶ 'War Diary', 3rd Australian Field Ambulance, July 1915, AWM4, 26/46/7.

⁷⁷ Recommendation files for Honours and Awards, AIF, 1914-18 War, 5th Australian Division, 16 June 1918 to 28 June 1918, AWM28 1/301; and, Recommendation files for Honours and Awards, AIF, 1914-18 War, 5th Australian Division, 8th Australian Infantry Brigade, Army book 129, 1916 to 1918, AWM28 2/106.

- 15-73 It was also submitted that Howse, as the only VC recipient in the medical corps, had a conflict of interest and obstructed the processing of recommendations. This proposition is not supported by any evidence. Nor could weight be placed on suggestions that Sutton's diary entries implied that he had recommended a VC for Simpson and the recommendation was rejected by Howse before it was even considered. At the public hearing in Perth, Mr Malcolm, who for many years had been researching 3rd Field Ambulance and Simpson, described such propositions as absurd. He said it is clearly evident in Sutton's diary that he [Sutton] had a very difficult relationship with, and was extremely critical of, Howse. If Sutton suspected that Howse had obstructed a VC recommendation for Simpson, for any reason, it would have certainly been written in Sutton's diary. It was not.
- 15-74 One submitter put to the Tribunal that Simpson's nomination, having not been found, could have been among the 3rd Field Ambulance documents that were pushed into the sea from the wharf during the evacuation from Gallipoli. The Tribunal placed no weight on this suggestion, given that Simpson was killed in May and the evacuation occurred in December 1915. It would be hard to imagine a VC recommendation for Simpson sitting in a file for seven months, when there is no evidence that any other recommendations for honours were delayed in such a way. In any case, if there was a recommendation for Simpson that had been mislaid, it would not be in 3rd Field Ambulance files, but instead at division or corps headquarters. While 3rd Field Ambulance documents may have been destroyed, there is no evidence that this created any injustice for Simpson.
- 15-75 Regardless of what may have taken place in the preceding months, by 2 September it is clear that Fry understood that Simpson could not be further honoured. In his letter to Simpson's sister, Fry said 'We hoped that one of the military decorations of honour might be awarded [to] him, as he fully deserved it, but unfortunately all who deserve cannot receive the special rewards'.⁷⁸ The Tribunal notes that this sentiment equally applies to many other Australian soldiers from all conflicts, not only to Simpson.

VC denied on a technicality

- 15-76 Some submitters put to the Tribunal that a VC for Simpson was denied on the basis of a technicality, namely, a change to the VC regulations. Referring to its earlier discussion on changes to regulations for the VC at paragraph 4-4, the Tribunal found no substance in this argument. While there was a change made to the VC regulations that would have impacted on the AAMC during the First World War, it did not come into effect until 30 August 1916.⁷⁹ There was no effect on any consideration that may have involved Simpson.

The award of an Mention in Despatches should not preclude a Victoria Cross also being awarded

- 15-77 It was put to the Tribunal that while Simpson had already been recognised with an MID, this should not preclude his consideration for a VC for the same

⁷⁸ Letter, HK Fry to Miss Simpson Kirkpatrick, 2 September 1915, AWM 3DRL, 3424.

⁷⁹ AG Butler, *Official history of the Australian Army Medical Services, 1914–1918*, vol. 3, Australian War Memorial, Melbourne, 1930, pp. 1045–1046.

action. It was suggested that a precedent was established in which others in this period had been recognised with two awards for the same action. In the case of 3rd Field Ambulance, McWhae, Farnham and Rosser were each awarded an MID for their service from 25 April to 1 May, and were separately recommended and awarded the DCM for the same period. While this may appear anomalous, the Tribunal found that Howse recommended the MIDs as representative of the work done by all members of 3rd Field Ambulance and, as such, there were no specific descriptions of individual actions included in the recommendation. On the other hand, the DCMs awarded to the three, while being in the same period, were made in recognition of individual acts of gallantry and the descriptions, written and signed by Fry, specifically define those acts. The Tribunal found no recommendation that described an individual act of gallantry by Simpson at the time.

- 15-78 By contrast, the Tribunal found that the authorised process for considering honours recommendations was not strictly adhered to because the medical technical chain of command was used rather than the operational chain of command. However, it would appear that Howse played a beneficial role in the process and the variation to the chain of command for considering recommendations actually favoured the AAMC soldiers. No evidence was found that Simpson was ever recommended for a VC.

Tribunal review of the merits of the case

- 15-79 The Tribunal also considered, from all the material available to it, the merits of the case for elevating the recognition of Simpson for his actions at Gallipoli. This merits review was carried out in accordance with the Tribunal's approach as outlined in paragraph 8-46 of the Report.
- 15-80 In his submission, Mr Malcolm alerted the Tribunal to new evidence, a repatriation file, in which it was noted that orders were given to destroy 3rd Field Ambulance records during the evacuation from Gallipoli in December 1915. This evidence was informative, but not compelling with regard to the merits of Simpson being awarded a VC. This evidence was considered earlier in the process review.
- 15-81 No further new or compelling evidence was submitted or uncovered by the Tribunal in its own research.
- 15-82 Some submitters suggested that Simpson deserved a VC because he represented what it means to be Australian, and there was strong community support for such recognition. While this might be a popular proposition, the VC can only be awarded for valorous conduct in the presence of the enemy. The Tribunal found that Simpson's initiative and bravery were representative of all other stretcher-bearers of 3rd Field Ambulance, and that bravery was appropriately recognised as such by the award of an MID.

Tribunal conclusion

- 15-83 The Tribunal concluded that on both process and merits, Simpson's case was properly considered at the time. The process and procedures were not followed precisely, but considering the circumstances, they were appropriate and fair. Private Simpson was appropriately honoured with an MID. A merits review was unable to sustain any alternative outcome.

Tribunal recommendation

- 15-84 The Tribunal recommends no action be taken to award Private Simpson a VC for Australia or other further form of recognition for his gallantry or valour.

CHAPTER SIXTEEN

ABLE SEAMAN DALMORTON JOSEPH OWENDALE RUDD

- 16-1 Dalmorton Joseph Owendale Rudd was born on 14 June 1896 in Sydney and educated at Canterbury Boys High School. He joined the RAN on 30 October 1913 for an initial period of five years.¹ His younger brother Leonard Thomas Rudd was also a member of the RAN, and they both later served in HMAS *Australia* in 1919.
- 16-2 Rudd's first posting was HMAS *Cerberus* as an Ordinary Seaman II until 26 April 1914, when he was posted to HMAS *Melbourne*. On 11 June 1914 he was posted to HMAS *Australia*, and was promoted to Ordinary Seaman. He was further promoted to Able Seaman on 18 August 1915. Having passed the necessary examinations, Rudd was promoted to Leading Seaman on 12 December 1917.²
- 16-3 At the end of February 1918, Rudd volunteered for special duty with the RN and took part in the shore raid on Zeebrugge on 22–23 April 1918 that led to his participation in one of a number of ballots to select a rating for the award of the Victoria Cross (VC). This ballot selected Able Seaman Albert McKenzie RN. The other three ballots were to select a Royal Marine officer, a Marine other rank and a naval officer from those who participated at Zeebrugge. For his part in the raid, Rudd was awarded the Distinguished Service Medal (DSM).
- 16-4 After Zeebrugge, Rudd returned to HMAS *Australia* on 24 April 1918. On 12 May 1919, as punishment for committing a breach of discipline, he was deprived of his second Good Conduct badge and was demoted to Able Seaman. He remained in *Australia* for her return to Fremantle, Western Australia, on 28 May 1919.³
- 16-5 Rudd was subsequently involved in a mutiny in *Australia* on 1 June 1919, and on pleading guilty, was sentenced to 18 months in Goulburn Gaol. Following four months of debate in the Australian Parliament about the severity of the sentences, Rudd and four other ratings were released from Goulburn Gaol and discharged from the Navy on 20 December 1919. Rudd died in 1969 aged 73.⁴



Able Seaman Dalmorton Joseph Owendale Rudd

(Photograph courtesy of Ms Cheryl Langford)

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

2 *ibid.*

3 *ibid.*

4 New South Wales Death Certificate: 15572/1969.

Recognition of service

16-6 For his naval service, Able Seaman Rudd was entitled to the following honours and awards:

- Distinguished Service Medal
- 1914–1915 Star
- British War Medal 1914–1920
- Victory Medal.

What has led to the review?

16-7 While no family member has sought reconsideration of the level of award for valour made to Rudd, Able Seaman Rudd was formally nominated for review in the Terms of Reference, after being proposed by the Chief of the Defence Force in a ministerial submission to the government.⁵ Defence did not provide any material to the Tribunal to suggest that Rudd's recognition was inadequate and was not able to provide any of the submissions that it claimed had led to his name being included in the Terms of Reference.

16-8 A family member, Ms Cheryl Langford, was present at the Tribunal's public hearing in Sydney in February 2012 but chose not to make a submission. However, Ms Langford provided photographs of Rudd in naval uniform wearing his DSM.

Submissions

16-9 The Tribunal received no submissions in support of a higher level of Defence honour to Rudd. Three of the four written submissions received were against any new Defence honour for Rudd. One provided historical information. The written submissions were:

- a. Submission 99 — Mr Graham Wilson (against)
- b. Submission 123 — Mr Peter Cooke-Russell, National Vice President, The Naval Association of Australia (historical background only)
- c. Submission 124 — Mr Richard Pelvin (against)
- d. Submission 142 — The Navy League of Australia (against).

No oral submissions were made.

Background

16-10 Rudd served for the whole of the First World War (apart from the Zeebrugge raid) in the battle cruiser HMAS *Australia*. From 10 August 1914, command of *Australia* was transferred to the Admiralty⁶. After service in the Pacific, *Australia* joined the British Grand Fleet at Scapa Flow in February 1915. *Australia* was tasked with escort duties until she had proven herself, and missed the Battle of Jutland

⁵ 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.

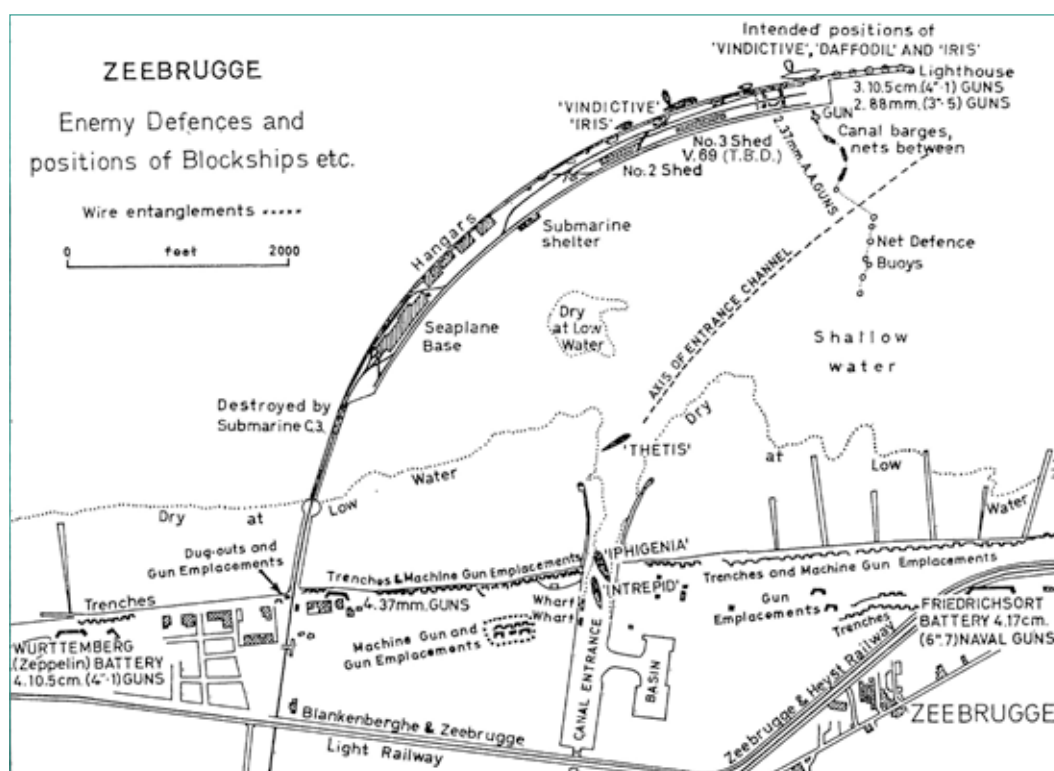
⁶ Proclamation no. 27/1914 of Governor-General Rt Hon. Sir Ronald Ferguson.

[1916] due to an unfortunate collision with the battle cruiser HMS *New Zealand*. On 23 February 1918, after repairs, and escorting a convoy between Bergen and Aberdeen, *Australia* received a communication requesting eleven volunteers (seamen and stokers) for special service.⁷ At the time, Rudd was to have been transferred to the Royal Navy London Depot for further training as a Leading Seaman; however, he volunteered and was selected to train for a raid on the Belgian port town of Zeebrugge, to be conducted in April 1918. Rudd subsequently received orders to report to Chatham Depot where his 'raid' training was to begin.⁸ He was to be a member of No. 4 Section, A Company, Seaman Storming Party, one of a number of RN storming parties embarked in HMS *Vindictive*. He and his shipmates trained between 1 March and 21 April 1918.

Description of the action

The Zeebrugge raid — 22–23 April 1918

16-11 Zeebrugge, a small town on the Belgian coast at the mouth of the inland port of Bruges, was a major German U-boat base. It was home to the 18 U-boats and 25 destroyers that accounted for over a third of all the Allied tonnage sunk in the First World War.⁹ A solid stone breakwater, over a mile long and sixty feet high



Source: Paul Halpern (ed), *The Keyes Papers: selections from the private and official correspondence of Admiral of the Fleet Baron Keyes of Zeebrugge*, vol. 1, Navy Records Society, London, 1972, p. 462

Map 3 Zeebrugge showing ship location

⁷ Peter Burness, 'Australians at Zeebrugge', *Naval historical review*, December 1975, p. 39.

⁸ Stoker NJ McCrory, RAN, 'Account of the raid on Zeebrugge by Ships of the RN', AWM: 12/11/4812, Private Records 1DRL/0429.

⁹ Max Arthur, *Symbol of courage — the men behind the medal*, Pan Books, London, 2005, p. 363.

at low tide, curved out from the shore in a quarter-circle to form an artificial harbour that protected the Zeebrugge Canal entrance. The concrete battlements on top of the breakwater were named 'The Mole' and were heavily defended by several gun emplacements. The Mole was connected by a small wooden bridge to the mainland. A raid on Zeebrugge (and sister coastal town Ostend) was first proposed in 1917 by Commander-in-Chief of the British Grand Fleet, Admiral Sir John Jellicoe, which if successful, would cripple the German U-boat base.

Objectives of the raid

- 16-12 The report of the Vice-Admiral Dover Patrol, Vice Admiral Roger Keyes, RN, said that the objectives of the proposed Zeebrugge and Ostend raids were to:¹⁰
- block the Bruges ship canal at its entrance into the harbour at Zeebrugge;
 - block the entrance to Ostend harbour from the sea; and
 - inflict as much damage as possible upon the ports of Zeebrugge and Ostend.
- 16-13 As part of the plan, three 'blocking ships' HM Ships *Thetis*, *Intrepid* and *Iphigenia* and also the submarine HMS *C3* were to be sunk across the entrance of the harbour, trapping any German submarines and shipping in the port. Map 3 shows the enemy defences and positions of block ships at Zeebrugge. The raid was formally approved by the British Admiralty in February 1918, and consisted of 129 ships, including blocking ships, submarines, monitors, minesweepers, light cruisers, and a total of 7,445 officers and men. Throughout February and March 1918, a volunteer force of 82 officers and 1,698 men, was raised and given specialist training at either Chatham Depot or the Royal Marine Barracks at Deal. The volunteers who were to be embarked in the blocking ships were drawn from various corners of the British Empire, including Royal Marines and the RN.

The Australians who took part in the Zeebrugge raid

- 16-14 The Australian contingent was made up of 10 men and one Warrant Officer from the RAN. Warrant Officer Artificer Engineer William Henry Vaughan Edgar was selected as engineer-officer and put in charge of the engine room in HMS *Iris II*, while five Australian seamen would serve on *Vindictive*, and five Australian stokers would serve on the block ship HMS *Thetis*.¹¹ Table 16-1 lists the Australian participants.

¹⁰ 'Naval Despatches from the Vice-Admiral, Dover Patrol on Zeebrugge and Ostend Raids', *Second supplement to the London Gazette* no. 31189, 18 February 1919, p. 2519.

¹¹ Confirmation report of Australian volunteers at Zeebrugge Raid — Extract from 104th Report of the Naval Representative, 30 April 1918, Docket No Confl. 18/013, pp. 4–6, NAA: MP 124/6, 528/201/79.

Table 16-1 Australians who took part in the Zeebrugge raid

Name	Rank	Seconded to ship
Edgar, William Henry Vaughan	WO Artificer Engineer	<i>Iris II</i>
Gillard, Henry John (Harry)	Able Seaman	<i>Vindictive</i>
Newland, Leopold Thomas	Able Seaman	<i>Vindictive</i>
Staples, George Edward	Able Seaman	<i>Vindictive</i>
Bush, George John	Leading Seaman	<i>Vindictive</i>
Rudd, Dalmorton Joseph Owendale	Leading Seaman	<i>Vindictive</i>
Bourke, William John	Stoker	<i>Thetis</i>
Hopkins, Reginald	Stoker	<i>Thetis</i>
Lockard, Godfrey J	Stoker	<i>Thetis</i>
McCrory, Norbert James	Stoker	<i>Thetis</i>
Strong, James	Stoker	<i>Thetis</i>

The raid

- 16-15 Rudd was a member of No. 4 Section, A Company, Seaman Storming Party, part of an RN storming party from HMS *Vindictive* that was tasked with landing on The Mole and silencing the guns. Two groups of coastal motor boats were to attack the western end of The Mole to distract the enemy's attention while *Vindictive* approached. At one minute past midnight on 23 April 1918 (St George's Day), *Vindictive* came under heavy fire as it approached The Mole and overshot its assigned berthing position, throwing the planned operations into some confusion. *Vindictive* continued its approach under a hail of fire that inflicted heavy casualties on the crew and killed most of the officers in charge of the landing parties. A few minutes later *Iris II* was brought alongside The Mole ahead of *Vindictive*.¹² The mission of the RN storming parties now turned to diversionary action while other ships and parties went about achieving their objectives. The five Australian seamen from *Vindictive* had all gone ashore and managed to avoid injury. The first of the RN storming parties, which included the five Australians, then made its way along the narrow swaying gangways to begin the assault. Able Seamen Rudd and Gillard were among those who clambered down an iron ladder onto The Mole and killed several of the enemy. They both returned to *Vindictive* uninjured.¹³
- 16-16 The attack on Zeebrugge had only limited success. Although the harbour and canal were blocked for several weeks, the Germans soon dredged a channel around the sunken block ships allowing the destroyers and submarines to pass by, albeit with extreme difficulty. Of the 1,780 from the RN Storming Parties,

¹² Confirmation report of Australian volunteers at Zeebrugge Raid.

¹³ Admiralty, Historical Section: Records used for Official History, First World War: Reports on Zeebrugge and Ostend Operations, 1918 Apr–May.. TNA: ADM 137/3894.

214 British personnel were killed and 383 were wounded. The 11 Australians emerged relatively unscathed.¹⁴

Chain of command for awards

- 16-17 With the exception of two immediate awards for seriously wounded seamen not expected to live, all awards for the Zeebrugge raid went through the usual RN channels. In the case of Rudd and the others, a list of nominees, appropriate recommendations and a full report of the action was dispatched from the Captain of *Vindictive* (Acting Captain Alfred Carpenter, RN), to Vice Admiral Keyes, who was in charge of the entire operation, and then to the British Admiralty.

Honours and awards made for the action

- 16-18 As noted in paragraph 4-22, the recipients of four of the VCs for the Zeebrugge raid were determined by a ballot conducted among the participants. After the ballots, correspondence from the Honours Committee at the Admiralty dated 29 June 1918 discussed the use of promotion of officers versus the conferring of awards as recognition of their actions and efforts during the raid. The Admiralty sought to decide which option would provide the greatest benefit to the recipient. The committee decided that an immediate special promotion would be of the greatest benefit to an officer and his family; the next officer on the recommendation list for an award would then be noted for early promotion. forty officers received special promotions; 22 of these officers were also awarded honours. Another 15 officers received early promotion, of which 9 also received honours. The Zeebrugge recommendations list was therefore altered to reflect this. Some names for promotion were deleted from the honours list, as were the deceased, and some names from other lists were upgraded. This had a flow-on effect for the other ranks. One such amendment affected Rudd, whose name was transferred from the Mention in Despatches (MID) list to the DSM list. One person on the DSM list was promoted to the VC list after the ballot. Three others were awarded bars to their DSMs.¹⁵
- 16-19 The outcome of the Admiralty's deliberations was the following awards:
- 6 VCs (including 4 as a result of the ballots)¹⁶
 - 4 Companions of the Order of the Bath (CB)
 - 2 Companions of the Order of Saint Michael and Saint George (CMG)
 - 39 Distinguished Service Orders (DSO)
 - 50 Distinguished Service Crosses (DSC)
 - 21 Conspicuous Gallantry Medals (CGM)
 - 202 DSMs
 - 180 MIDs.¹⁷

¹⁴ Reports of Zeebrugge and Ostend Operations 22–23 April 1918, Vice Admiral, Dover. Admiralty Library: M.05907/18, M. 05881/18 [OU 6170].

¹⁵ Honours Committee Minute no. CW 27984, 17 June 1918, TNA: ADM 116/1811.

¹⁶ Two posthumous VCs were awarded in February 1919 and are not included in these figures.

¹⁷ Zeebrugge & Ostend Honours Awards, TNA: ADM 116/1811; also *Fourth Supplement to the London Gazette* no. 30807, 23 July 1918.

This total of 504 awards from among 7,445 officers and men amounted to approximately one honour for each 14.77 participants in the raid (6.76 per cent), which was well above the operational scale (quota) for the Admiralty. The Belgian Government later also gave a number of awards for bravery, but only two went to Australians and none to Rudd.

- 16-20 Despite an extensive search, the Tribunal has not been able to find the citation for Rudd's DSM. It appears that only VC citations and those for conspicuous gallantry were raised at the time.

The ballot for a Victoria Cross

- 16-21 Pursuant to the Royal Warrant for the VC of January 1856, Rule (sometimes called Clause) 13 provides:

It is ordained that in the event of a gallant and daring act having been performed by a squadron, ship's company, or detached body of seamen and marines not under fifty in number ... in which an Admiral, General or other officer commanding may deem that all are equally brave and distinguished and that no special selection can be made by them, then in such case the Admiral, General or other officer commanding may direct that for any such body ... one officer shall be selected by the officers engaged for the Decoration; and in like manner one petty officer or non-commissioned officer shall be selected by the petty officers and non-commissioned officers engaged; and two seamen or private soldiers or marines shall be selected by seamen or private soldiers, or marines engaged respectively, for the Decoration ...¹⁸

In this case, two separate ballots were held, which resulted in four VCs being awarded. Two VCs went to the Royal Marines (one to an officer and one to an other rank) chosen from among the Marines who participated in the raid. The other two VCs were chosen when the naval officers and men forming the crews of *Vindictive*, *Iris II*, *Daffodil* and the Naval Assaulting Force chose one officer and one other rank in accordance with Rule 13 to the VC Regulations.

- 16-22 The Zeebrugge raid ballots were conducted on the afternoon of 26 April by giving each voter a slip of paper and pencil to write down their vote. The slips were then tallied and the results recorded. An illustration of this for the Royal Marines can be found in Adjutant Captain Arthur Chater's diary, in which he states:

I explained what was to be done, slips of paper were issued, the troops were then told to break off for a few minutes to consult each other before writing a name on their paper and handing it in. While this was being done, the CO and I went to the office to complete the report, leaving Captain Bamford in charge to collect the voting slips and add up the results. Half an hour later he arrived at the office looking rather sheepish. He handed the CO a list showing himself as having recorded the greatest number of votes.¹⁹

- 16-23 Five Australians (Rudd, Bush, Staples, Gillard and Newland), participated in the ballot as part of the crews of *Vindictive*, *Daffodil*, *Iris II* and the Naval Assaulting Force, to select one from the other ranks to receive the VC. Their participation in

¹⁸ *London Gazette* No. 21846, 5 February 1856, p 411.

¹⁹ Imperial War Museum Department of Documents, Capt. AR Chater RMLI 74/1101/1.

the ballot was duly noted on their service records.²⁰ The RAN service card for Rudd states that: 'he participated in the ballot for the award of VC granted for services during the operations against Zeebrugge and Ostend on the night of 22/23 April 1918'.²¹ The Tribunal was unable to find a copy of the sailors' ballot results, so could only confirm that Rudd participated in the ballot. Edgar, who was on board *Iris II*, did not participate in the VC ballots. His service record showed no notation.²²

16-24 Participation in the ballot was also noted on the service records of the Royal Marines. One such illustration is the service record for Lieutenant Charles RW Lamplough, Royal Marines Light Infantry (RMLI), 4th Royal Marine Battalion, Commanding Officer of No. 9 Marines Storming Party. The service record shows that 'Lieutenant Charles RW Lamplough RMLI participated in the ballot for award of Victoria Cross presented for operations against Zeebrugge and Ostend on the night of 22nd to 23rd April 1918 (*London Gazette*)'.²³ Lieutenant Lamplough was awarded the DSC and was promoted to Captain for his participation in the attack on Zeebrugge.

16-25 Table 16-2 lists the honours awarded to all eleven Australians, and also whether they participated in any of the VC ballots.²⁴

Table 16-2 Honours awarded to Australians who took part in the Zeebrugge raid

Name	Rank	Seconded to ship	Honour	Participated in VC ballot
Edgar, William Henry Vaughan	WO Artificer Engineer	<i>Iris II</i>	DSC and immediate promotion to Lieutenant	No
Gillard, Henry John (Harry)	Able Seaman	<i>Vindictive</i>	MID & Belgian Croix de Guerre	Yes
Newland, Leopold Thomas	Able Seaman	<i>Vindictive</i>	MID	Yes
Staples, George Edward	Able Seaman	<i>Vindictive</i>	DSM	Yes
Bush, George John	Leading Seaman	<i>Vindictive</i>	DSM	Yes
Rudd, Dalmorton Joseph Owendale	Leading Seaman	<i>Vindictive</i>	DSM	Yes
Bourke, William John	Stoker	<i>Thetis</i>	Nil	No
Hopkins, Reginald	Stoker	<i>Thetis</i>	Nil	No
Lockard, Godfrey J	Stoker	<i>Thetis</i>	Nil	No
McCorry, Norbert James	Stoker	<i>Thetis</i>	MID & Belgian Croix de Guerre	No
Strong, James	Stoker	<i>Thetis</i>	Nil	No

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

Service Record, George John Bush #8517, NAA: A6770, BUSH G J; and Service Record George, Edward Staples #2858, NAA: A6770, STAPLES G E; Service Record, Henry John Gillard #8517, NAA: A6770, GILLARD H J; Service Record, Leopold Thomas Newland #1937, NAA: A6670, NEWLAND L T.

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

22 Service Record, William Henry Edgar #7423 NAA: A6770, EDGAR W H.

23 'Lamplough, Charles Robert Wharram 10 June 1896 Major General — Admiralty Officer's Service Record [Series III]', TNA: ADM 196/64/117

24 Paul Kendall, *The Zeebrugge Raid — the finest feat of arms*, Spellmount, Brimscombe Port, 2009, passim.

Rudd and the HMAS *Australia* mutiny

- 16-26 After the Zeebrugge raid, Rudd returned to duty in HMAS *Australia*, which, at the end of hostilities, sailed for Australia. In May 1919, although the Peace Treaty had not been signed at Versailles, the war was considered over and the Admiralty's control of the ships of the Australian Navy was about to end.²⁵
- 16-27 HMAS *Australia* sailed from Portsmouth on 17 April 1919 and arrived in Fremantle, Western Australia, on 28 May. *Australia* was commanded at the time by Captain Claude Cumberlege, RN, and Commodore Commanding the Fleet, Rear Admiral John Dumaresq, RN, was also embarked.
- 16-28 Five sailors, later to be accused of mutiny, wrote in a joint statement:
- Upon arrival at Fremantle, we were the recipients of a great welcome by the people of Western Australia, and many kindnesses were shown to us. On the last day of our stay, a rumour went around that the vessel would not leave until Monday, it being then Saturday, and also that the people would be admitted on board on the Sunday. This gave great satisfaction to the crew, as we felt we would be able to show, in some small degree, our appreciation of all the good things that had been done for us. When we returned on board Sunday morning and learnt for the first time that the ship was sailing in an hour or two, a great deal of resentment was evident among the crew.²⁶
- At 1030 on 1 June 1919, when Cumberlege ordered *Australia* to sail for Sydney, a group of between 80 to 100 men assembled on the quarterdeck and, through a spokesman, asked the Captain to delay the sailing of the ship. The Captain did not agree and told the sailors to disband. The Captain recorded that certain ship's company 'were fomenting trouble and their names were taken'. At this time the ship was standing by to proceed to sea.²⁷
- 16-29 Subsequently, those reported refused to perform their duties and the ship's departure was as a consequence delayed. The mutiny lasted only a short time, but Rudd and four other ratings (one of whom was his younger brother Stoker Leonard Rudd) did not disperse, despite being warned that they would be court-martialled if they disobeyed the order.
- 16-30 The five ratings were charged with 'having, while belonging to HMAS *Australia* and then being persons subject to the Sect. 11 *Naval Discipline Act 1866*, joined in a mutiny not accompanied by violence on board *Australia* on 1 June 1919'.²⁸ Captain Cumberlege summarily sentenced 12 other men to 90 days imprisonment for their part in the mutiny, sentences which required and received the approval of Commodore Dumaresq.²⁹
- 16-31 HMAS *Australia* then sailed for Sydney, and arrived there on 19 June 1919. For Rudd and the other four, all aged between 18 and 23, the court martial was held on 20 June 1919 on board HMAS *Encounter*, with Commodore John Glossop, RN,

25 Arthur W Jose, *The Royal Australian Navy 1914-18, the official history of Australia in the War 1914-1918*, vol. 9, Angus & Robertson, Sydney, 1938, Chapter 10.

26 Letter from the accused men, read to the court martial on 20 June 1919. NAA: SP339/1, C14 Part 4.

27 Captain CL Cumberlege, 'circumstantial letter' read at the court martial, from personal memoirs of Captain CL Cumberlege, RN, Commodore Commanding HMAS *Australia*,. NAA: SP339/1, C14 Part 4.

28 *ibid.*

29 *ibid.*

as President of the Court. All pleaded guilty. All, except Ordinary Seaman Patterson, were defended by prominent lawyers retained by the Australian Labor Party. Patterson instead chose Lieutenant Philip Bowyer-Smyth, RN, as 'Prisoner's Friend' and, due to his young age and previous good naval service, he received a sentence six months shorter than the rest and was not to be dismissed from the Navy upon the completion of his sentence.³⁰

- 16-32 Able Seaman Rudd was originally sentenced to 18 months' imprisonment on 20 June 1919 and, upon completion of the sentence, to be dismissed from the RAN. On 21 June 1919, he and the other four ratings were transferred to Goulburn Gaol to begin their sentences.³¹

Australian Government and public agitation for the release of the prisoners

- 16-33 On 28 June 1919, the Treaty of Versailles was signed in Paris. As part of the conditions of the Treaty, various governments were giving amnesty to some prisoners who were under civil, military and naval sentences, as an act of good faith. Australian newspapers were already reporting 'brutal imperial naval officers' after incidents in Aden earlier in 1919, where the RN had overruled RAN officers. Once again, the newspapers attacked the RN for holding the court martial. Within a week of the court martial, the Australian Labor Party's Senator Herbert Pratten, one of the most vocal of the government's opponents in the Senate, was referring to the 'so-called mutiny' and expressing his sorrow that such heavy sentences had been imposed.³² In the House of Representatives, Cornelius Wallace, MP, considered that the sailors had been 'brutally and savagely sentenced' and his colleague James Fenton, MP, called for the tabling of the court martial papers.³³
- 16-34 Six weeks later, on 1 August 1919, the RAN ships reverted to Australian command.³⁴ For the next four months, debate raged in the Australian Parliament about the severity of the sentences and on the unacceptability of the Admiralty's having retained control of the ships until 1919. The court martial sentences and process were debated no less than 25 times. With a general election due at the end of the year the opposition debated the issue and used the public disquiet created to harry the government.³⁵ On 20 December 1919, all five ratings were released from gaol. They were given their service documents, paid their wages up to that date (which included naval prize money payments) and were given rail passes to return home to their various states. It should be noted that Rudd remained at his rating level of Able Seaman until discharged from gaol and the RAN on 20 December 1919.³⁶

30 Correspondence relating to: Courts of Inquiry between 1915–1920: Correspondence re: Court martial of Stoker Thomas L Rudd, Stoker William G McIntosh, Able Seaman Dalmorton J O Rudd, Ordinary Seaman Wilfred Thomson, Ordinary Seaman Kenneth H Patterson, NAA: SP339/1, C14 Part 4.

31 'The mutiny in HMAS *Australia* in 1919', *The Naval Review*, October 1972, no. 4 vol. 60 pp. 388–389.

32 CPD, Senate, 26 June 1919, p. 10115 (Herbert Pratten).

33 HMAS *Australia* — reduction in sentence or release. CPD, H of R, 27 June 1919.

34 R Hyslop, 'Mutiny in "HMAS *Australia*" — a forgotten episode of 1919 in political–Naval relations', *Journal of the Australian Regional Groups of the Institute of Public Administration*, vol. 24, no. 3, September 1970, p. 286.

35 CPD, Senate, 18 September 1919, pp. 12503–12504.

36 Letter, Glossop to Lt Smith, RN, 13 December 1919, NAA: SP339/1 C14 & CNO no. 260 of 1919.

- 16-35 On 29 November 1920 Rudd completed his Application for War Gratuity stating that he had recently married on 20 November 1920. He stated in his application that he had been discharged from the Navy on 20 December 1919 with a rating of Able Seaman. Rudd's application was approved on 20 December 1920 and he was paid A£134.5s.1d.³⁷ Rudd married a third time in 1945 and died in 1969.

Did Rudd forfeit his Distinguished Service Medal?

- 16-36 It has been alleged that Rudd had his DSM forfeited, in which case, consideration might have been given to restoration. The official RAN website states that Rudd had: 'his DSM stripped'.³⁸ However, the Tribunal's research has revealed that the court martial that sentenced Rudd did not order the forfeiture and Rudd's RAN Service Card clearly shows the awarding of the DSM, and its gazettal. All honours and awards must be published in the *London Gazette*. A common requirement of legal/government procedures is that where a notice must be gazetted to validate an award, then a notice must also be gazetted to validate the relinquishing or forfeiture of an award (*Acts Interpretation Act 1901* [Cwlth]). The Tribunal found neither forfeiture documents nor gazettal of Rudd's DSM having been forfeited.
- 16-37 The release-from-gaol letter signed by Commodore Glossop to the Naval Accounts Officer dated 13 December 1919 refers to Rudd as still having his DSM, as does other correspondence, including official Navy letters, applications and references on file.³⁹ In Rudd's subsequent letters to the government, his application for several naval gratuities, and his veteran's pension application, together with the respective replies from these institutions, all refer to Rudd as having retained his DSM.⁴⁰
- 16-38 The Tribunal doubts that the statement on the RAN website is correct and accepts that Rudd's DSM was never officially forfeited or revoked by the relevant authority.

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

Arguments put forward in submissions for the award

- 16-39 There were no arguments advanced to support the award of the VC for Australia or any other honour to Able Seaman Rudd.

37 Application for War Gratuity by DJO Rudd. NAA: CP979/2, 6321.

38 Royal Australian Navy 2012, www.navy.gov.au/Dalmorton_Joseph_Owendale_Rudd, viewed 30 April 2012.

39 Dalmorton Joseph Owendale Rudd (Able Seaman): Service Number 3389; Wilfred Thompson (Ordinary Seaman), N/A; Kenneth Henry Patterson (Ordinary Seaman), 55590; Leonard Thomas Rudd (Stoker), 3493; William George McIntosh (Stoker), 3511: Unit — HMAS Australia: Date of Court Martial — 20 June 1919. NAA: A471/2113.

40 *ibid.*

Arguments against the award of the Victoria Cross

- 16-40 The arguments contained in the three submissions received against the award, provided the following views:
- Every Australian member of the Storming Parties on the Zeebrugge raid received a fair and just 'award', including Rudd (Submissions 99, 124 and 142).
 - Rudd was not personally nominated for consideration for the VC. Rudd was one of the voters, not a candidate. The ballot award went to the most suitable candidate in accordance with the VC regulations (Submission 99).
 - Rudd participated in a mutiny on HMAS *Australia* in 1919, was dismissed from the service and imprisoned. He should not now be considered for a VC (Submission 142).

Tribunal consideration of the award's process

- 16-41 The Tribunal first conducted a process review in accordance with the approach set out in paragraph 8-44 of this Report.
- 16-42 The Tribunal concluded that the processes followed, including the VC ballots, were fair, just and correct at the time, and there was no maladministration, bias, missing documentation or procedural flaws.

Tribunal review of the merits of the case

- 16-43 The Tribunal also considered, from all the material available to it, the merits of the case for elevating the recognition of Rudd for his actions at Zeebrugge. This merits review was carried out in accordance with the Tribunal's approach set out in paragraph 8-46 of this Report.
- 16-44 No previously missing, new or compelling evidence was produced by submitters. The Tribunal therefore concluded that there was no basis to question the judgement of the Admiralty in 1918, and recommends that no action be taken to award Rudd the VC for Australia or any other honour.

Tribunal recommendation

- 16-45 The Tribunal recommends 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.

CHAPTER SEVENTEEN

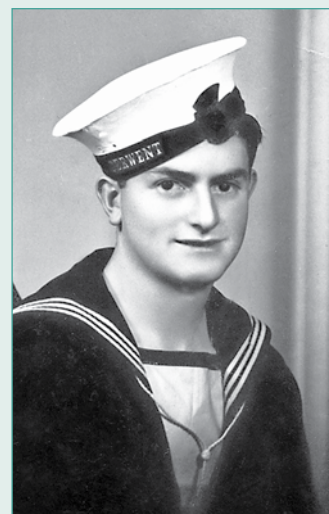
ORDINARY SEAMAN EDWARD SHEEAN

17-1 Edward (Teddy) Sheean was born in the small Tasmanian rural community of Lower Barrington on 28 December 1923, one of 16 children born to James and Mary Sheean. When Sheean was a child, the family moved to the nearby town of Latrobe, where he was educated.¹ He worked as a casual labourer on farms, until joining the Royal Australian Naval Reserve (RANR) at Hobart on 21 April 1941.

17-2 Sheean completed his initial training, and in February 1942 was posted to Flinders Naval Depot in Victoria. In May of that year he was posted to Garden Island, where his accommodation was the depot ship HMAS *Kuttabul*. On the night of 31 May 1942, while Sheean was absent from *Kuttabul* on leave, Japanese midget submarines penetrated Sydney Harbour and sank *Kuttabul*, with the loss of 21 ratings.

17-3 In June 1942 Sheean joined the newly commissioned corvette HMAS *Armidale*, where he was loader for one of the ship's three Oerlikon anti-aircraft (AA) guns. Initially, *Armidale* conducted escort duties on Australia's east coast and in the Coral Sea, before deploying to Darwin, arriving on 7 November 1942.

17-4 On 29 November 1942, as part of Operation Hamburger, *Armidale* sailed to Betano, on the island of Timor, to support Allied troops and facilitate the movement of refugees to Australia. On the afternoon of 1 December 1942, after shooting down a Japanese aircraft, Sheean was killed in action when *Armidale* was sunk by Japanese forces. That action is the subject of this review.



Ordinary Seaman Edward Sheean

(Photograph courtesy of the Australian War Memorial)

Recognition for service

17-5 For his naval service, Ordinary Seaman Edward Sheean was entitled to the following Defence honours and awards:

- 1939–1945 Star
- Pacific Star
- War Medal 1939–1945
- Australia Service Medal 1939–1945
- Mention in Despatches (MID) (Posthumous).

¹ N Watson, 'Sheean, Edward (1923–1942)' in *Australian naval personalities; papers in Australian maritime affairs*, no. 17, pp. 185–186; N Watson, 'Sheean, Edward (1923–1942)', *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, adb.anu.edu.au/biography/sheean-edward-11671/text20855, viewed 14 August 2012.

What has led to the review?

- 17-6 After the announcement of the loss of *Armidale* by the prime minister on 24 December 1942,² there were several media reports that also covered the bravery of Sheean. While the prime minister did not explicitly name Sheean, Curtin said that the tally of Japanese aircraft destroyed or damaged by *Armidale* 'was sufficient proof of the fighting spirit of her men'.³
- 17-7 A more comprehensive account was published in *the Australian Journal* on 2 April 1945, in which Ordinary Seaman Russell Caro described in some detail the loss of *Armidale* under the heading, 'We lost a corvette'.⁴
- 17-8 In his oral submission of 16 December 2011, Mr Garry Ivory stated that his family had sought further consideration of Sheean's case for recognition since the early 1950s.⁵
- 17-9 In 1968, the second volume of the official history of the RAN in the Second World War was published. The Official Historian, George Hermon Gill, included a description of Sheean's actions that credited him with shooting down a bomber, and recorded that Sheean remained at his gun while the ship sank. Gill also provided an account from Caro about Sheean's actions in a footnote.⁶
- 17-10 In 1978, following lobbying by former corvette captain and Member of Parliament Sam Benson, Dale Marsh painted the now well-known *Ordinary Seaman Edward Sheean, HMAS Armidale* commissioned by the Australian War Memorial and now on display there. A print of this painting also hangs in the Latrobe Memorial Hall. Benson later made representations to the Fraser government to have Sheean awarded a Victoria Cross (VC).
- 17-11 In 1980, the RAN Corvettes Association became a national organisation. State sub-branches amalgamated the individual ships' associations, bringing together up to 10,000 men who had served in corvettes. In the 1980s Frank Walker, a journalist before and after the Second World War and a corvette veteran, contacted 'reliable and respected people from Armidale'⁷ to inform his research for his book *The ship that had to die*.⁸ The book describes in detail the actions that led to the sinking of *Armidale*, action undertaken to search for survivors, and consideration by the naval authorities after these events including details of the Board of Inquiry (BOI).
- 17-12 In 1986, the Naval Commemoration Committee of Victoria was formed. It instituted the Ordinary Seaman Sheean Award for Gunnery, and obtained a painting, *Last action of HMAS Armidale* by Keith Swain. The award was presented annually to the sailor with the best results on the quartermaster gunner/boatswains mate course and for continued high standard of dress, behaviour and service attitude during their initial posting. As well as a small monetary reward,

2 'HMAS *Armidale* sunk in action off Timor', *The Canberra Times*, 25 December 1942, p. 1.

3 *ibid.*

4 RM Caro, 'We lost a corvette', *Australian Journal*, 2 April 1945.

5 Oral submission by Mr Garry Ivory, Public Hearing Launceston, 16 December 2011.

6 G Hermon Gill, *Royal Australian Navy 1942–1945, Australia in the war 1939–1945*, Australian War Memorial, Canberra, 1968, p. 218.

7 Oral submissions by Howard Halsted and Bill Allen, Public Hearing Sydney, 9 February 2012; also, on 16 December 2011, the Tribunal received a copy of some of these taped interviews.

8 Frank B Walker, *The ship that had to die*, Kingfisher Press, Budgewoi, 1990.

the sailor would receive a print of the painting. Administration of this award has since been discontinued.

- 17-13 For some years, the original of the painting was hung in the Gunnery school at HMAS *Cerberus*, but now resides in the Boatswains faculty, hanging directly above a metal sculpture of Sheean at his gun aboard *Armidale*.⁹ In 1986, after Bill Lamshed, an *Armidale* survivor, criticised the painting, it was repainted by the artist.
- 17-14 In 1987 the RAN Corvettes Association erected a plaque to commemorate Sheean in Ulverstone, Tasmania, and on 12 December 1992 the Teddy Sheean Memorial was officially opened in Latrobe, Tasmania.
- 17-15 In 2000, John Bradford's *In the highest traditions*¹⁰ was published and Chapter 6, 'A new factor in these waters — loss of *Armidale*' covered the detail of the loss of *Armidale* and discussed the award of a VC for Sheean:
- He [Sheean] had unhesitatingly sacrificed his own life, the sort of selfless and inspirational heroism which, by rights, should have seen him awarded a posthumous VC, not the posthumous Mention in Despatches (MID) his gallantry was finally accorded.¹¹
- 17-16 On 4 April 2001, the Shadow Minister for Veterans' Affairs, Senator Chris Schacht (ALP, South Australia), introduced the Award of Victoria Cross for Australia Bill 2001, to award posthumously the VC for Australia to three deceased Australian servicemen, namely Private John Simpson Kirkpatrick, Gunner Albert Cleary and Ordinary Seaman Edward 'Teddy' Sheean, for their actions in the First and Second World Wars.¹² Schacht stated that there was 'widespread support in both the veterans' and the wider community for the awarding of the posthumous VCs to three ordinary but very great Australian heroes'.
- 17-17 Further, on 1 June 2001, Mr Sid Sidebottom, MP (ALP Member for Braddon), introduced the Defence Act Amendment (Victoria Cross) Bill 2001, which also outlined the case for awards to Simpson, Cleary and Sheean, stating that it was supported by the Member for Corio (The Hon. Gavan O'Connor). The issue was included by the then Opposition Leader The Hon. Kim Beazley, MP, in the party platform in the 2001 general election.¹³ The Coalition won the election, and the matter of awarding the VC for Australia through an Act of Parliament was not pursued further.
- 17-18 In 2005, Frank Walker reprinted *The ship that had to die* under the new name *HMAS Armidale lives on*, with additional material that included chapters on the new Armidale class of patrol boats; acknowledging the naming of a Collins-class submarine after Sheean; and raising the issue of 'why no Victoria Cross for Australian sailors?'¹⁴

9 Email, Warrant Officer Martin Grogan, Manager, HMAS *Cerberus* Museum, 18 September 2012

10 John Bradford, *In the highest traditions: RAN heroism Darwin 19 February 1942*, Seaview Press, South Australia, 2000.

11 Bradford, *In the highest traditions*, p. 134.

12 CPD, Senate, 4 April 2001, pp. 23696–23699 [Chris Schacht].

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

14 Frank B Walker, *HMAS Armidale lives on*, Kingfisher Press, Budgewoi, NSW, 2005.

- 17-19 The inclusion of Sheean in this inquiry formally commenced on 19 October 2010 during an estimates hearing of the Senate Standing Committee on Foreign Affairs, Defence and Trade. A member of the Committee, Senator Guy Barnett (Liberal, Tasmania), named Sheean among six candidates he put forward for consideration of the award of the VC.¹⁵ Consequently, Sheean's name was included by the Parliamentary Secretary for Defence on the list directed in the Terms of Reference to this Inquiry.

Submissions

- 17-20 The Tribunal received 21 written submissions and heard 13 oral submissions regarding Ordinary Seaman Sheean.

Written submissions

- a. Submission 3 — Mr Frederick H White (for)
- b. Submissions 27, 27A and 27B — Mr Howard Halsted (President of the New South Wales Branch of the RAN Corvettes Association) (for)
- c. Submissions 57 and 58 — Mr Stanley Yates (President of the Victorian Branch of the RAN Corvettes Association) (for)
- d. Submission 64 — Mr John Satterley (no stated position)
- e. Submission 78 — Mr Garry Ivory (for)
- f. Submission 82 — Mr Brenton Best, MP (for)
- g. Submission 89 — Nowra Greenwell Point Sub-Branch, Returned & Services League (for)
- h. Submission 92 — Mr Michael Carlton (for)
- i. Submissions 95 and 95A — Dr Victor (Ray) Leonard (for)
- j. Submission 99 — Mr Graham Wilson (against)
- k. Submission 106 — Dr Tom Lewis (for)
- l. Submission 120A — Mr Guy Barnett (for)
- m. Submission 124 — Mr Richard Pelvin (against)
- n. Submission 128 — The Hon. Sid Sidebottom, MP (for)
- o. Submission 193 — Mr Chris Schacht (former senator) (for)
- p. Submission 200 — Brigadier Andrew Nikolic (Retd) (for)
- q. Submission 236 — Mr Sid Shepherd (for).

¹⁵ Senate Foreign Affairs, Defence and Trade Legislation Committee, Parliament of Australia, Supplementary budget estimates, 19 October 2010, pp. 106–109.

Oral submissions

- a. Mr Graham Wilson — Public Hearing Canberra, 1 December 2011 (against)
- b. Mr Richard Pelvin — Public Hearing Canberra, 2 December 2011 (against)
- c. Mr Peter Cooke-Russell, National Vice President, The Naval Association of Australia — Public Hearing Canberra, 2 December 2011 (for)
- d. Mr Stanley Yates — Public Hearing Melbourne, 14 December 2011 (for)
- e. Dr (Victor) Ray Leonard — Public Hearing Melbourne, 14 December 2011 (for)
- f. Mr Guy Barnett — Public Hearing Launceston, 16 December 2011 (for)
- g. Mr Garry Ivory — Public Hearing Launceston, 16 December 2011 (for)
- h. Brigadier Andrew Nikolic (Retd) — Public Hearing Launceston, 16 December 2011 (for)
- i. The Hon. Sid Sidebottom, MP — Public Hearing Launceston, 16 December 2011 (for)
- j. Mr Howard Halsted and Mr Bill Allen (on behalf of the RAN Corvettes Association) — Public Hearing Sydney, 9 February 2012 (for)
- k. Commander Graham Harris, RAN (Retd) (on behalf of the Navy League of Australia) — Public Hearing Canberra, 14 March 2012 (for)
- l. Mr Chris Schacht (former senator) — Public Hearing Canberra, 14 March 2012 (for)
- m. Rear Admiral James Goldrick, RAN — Public Hearing Canberra, 14 March 2012 (in support of alternative recognition).

Background

17-21 At the time of the action under review, Sheean was serving in the Bathurst-class corvette HMAS *Armidale*, which was commissioned into the RAN on 11 June 1942. This class of small ship had a length of 160 feet (48.6 m), beam of 31 feet (9.5 m), designed displacement of 650 tons (660 tonnes) and a designed maximum speed of 15 knots. The armament was one four-inch gun, three 20 mm Oerlikon AA guns, and 40 to 70 depth charges. *Armidale* also carried additional craft, including an eight-metre whaler, a motor boat, a Carley float, (at least) two minesweeping floats and three Denton rafts.¹⁶ The Bathurst class provided for a complement of 70 officers and men. Sheean's action station was one of two loaders in a three-man crew on the centreline aft Oerlikon AA gun. Unfortunately for *Armidale*, the four-inch gun mounted on the forecastle was largely useless against aircraft, due to it being constrained to a relatively low angle of elevation.¹⁷

¹⁶ Walker, *HMAS Armidale lives on*, p. 63.

¹⁷ Oral submission by Dr Victor (Ray) Leonard, Public Hearing Melbourne, 14 December 2011.



HMAS Armidale (I)

(Photograph courtesy of the Australian War Memorial)



An Oerlikon gun crew aboard a corvette — HMAS Geelong, 1942–1944

(Photograph courtesy of the Australian War Memorial)

- 17-22 In December 1942, the north of Australia was part of an area designated the South-West Pacific Area (SWPA), which had been formed by Allied supreme command in late March of that year. General Douglas MacArthur was appointed Supreme Commander SWPA. He created five subordinate commands: Allied Naval Forces, Allied Land Forces, Allied Air Forces, United States (US) Army Forces in Australia, and the US Army Forces in the Philippines. In September 1942 Vice Admiral Arthur Carpender, US Navy, took over (from Vice Admiral Herbert Leary, US Navy) as Commander, South-West Pacific Force (COMSOUWESPAC) and Commander Allied Naval Forces. Under these command arrangements, which some historians have called 'an abrogation of Australian sovereignty', the Chiefs of Staff of the Australian Services had no responsibility for the operations of their services.
- 17-23 By December 1942 the Japanese had occupied and were in control of the resource-rich Dutch East Indies to the north of Australia, including the large islands of Java and Sumatra. Closer to home, the Japanese also occupied the island of Timor, although a bitter campaign of guerrilla warfare was still being fought by Australian and Dutch forces.

Operation Hamburger

- 17-24 In May 1942, HMAS *Kuru* inaugurated the naval supply runs between Darwin and Betano in Timor, which were known collectively as Operation Hamburger.¹⁸ These operations were chiefly conducted under the direction of the Naval Officer-in-Charge (NOIC) Darwin, Commodore Cuthbert Pope, RAN. On 24 November 1942 Allied Land Forces Headquarters decided to relieve the Australian Independent Company on Timor, and at the same time evacuate some 150 Portuguese who wished to go to Australia.¹⁹ The naval units assigned were two corvettes: *Castlemaine* under the command of Lieutenant Commander Philip Sullivan, RANR(S) (Royal Australian Naval Reserve [Seagoing]), and *Armidale* under the command of Lieutenant Commander David Richards, RANR(S); together with the Auxiliary Motor Vessel *Kuru* under the command of Lieutenant Commander John Grant, RANR(S). The operation was planned by and under the direct control of Commodore Pope, who for operational purposes reported to COMSOUWESPAC. Sullivan was the senior commander of the three vessels at sea.
- 17-25 Pope's plan was for the slower *Kuru* to proceed to Betano in Timor, sailing from Darwin on the evening of 28 November, with the corvettes following from Darwin on the morning of 29 November. On arrival at Betano, and after seeing signal fires lit by those on the beach, *Kuru* was to land stores and embark Portuguese refugees prior to the arrival of the corvettes. The refugees were to be transferred

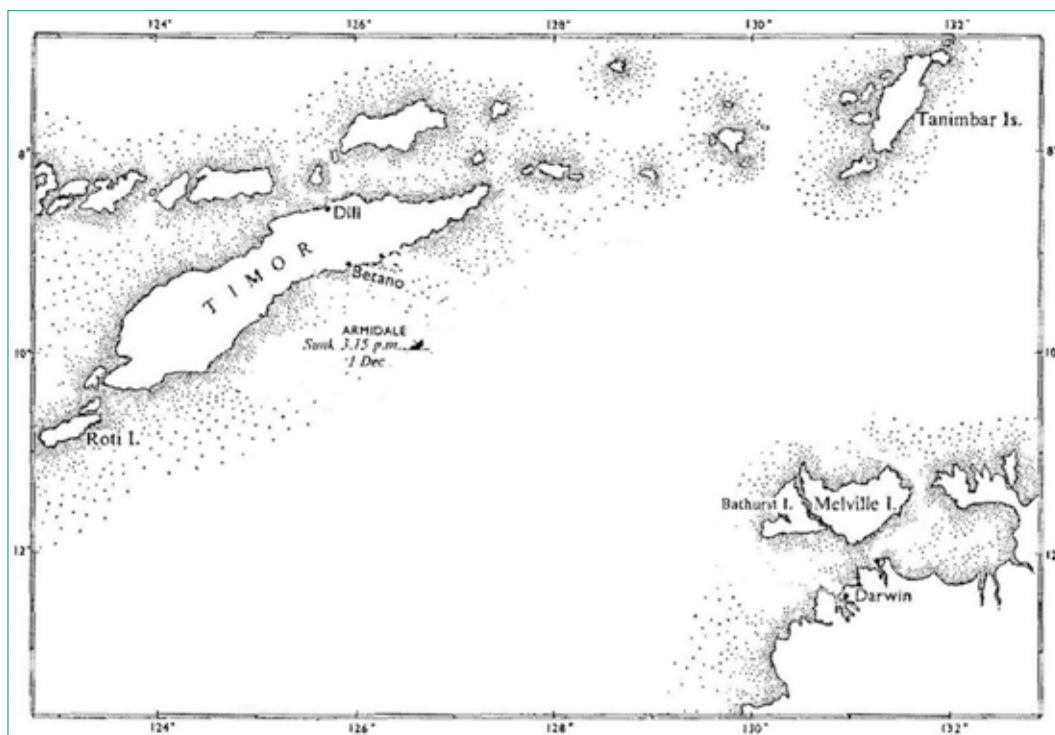


HMAS *Kuru*

(Photograph courtesy of the Australian War Memorial)

¹⁸ Royal Australian Navy, 'HMAS *Kuru*', Royal Australian Navy, www.navy.gov.au/hmas-kuru, viewed 10 October 2012.

¹⁹ Gill, *Royal Australian Navy 1942–1945*, pp 213–222.



Source: Gill, *Royal Australian Navy 1942–1945*, p 217.

Map 4 Location of the loss of *Armidale* in relation to Betano and Darwin

to *Castlemaine* for their immediate return to Darwin. *Kuru* would then land the Dutch troops from *Armidale*, load *Armidale* with sick and wounded commandos from the Independent Company and Dutch troops, embark *Kuru*'s own passengers, and then return in company with *Armidale* to Australia.

- 17-26 On 28 November, the commanding officers were issued with operation orders that outlined their respective directions from Pope. *Kuru* was to maintain maximum speed while within 100 miles of the Timor coast, and was warned that while there was no indication of enemy activity in the immediate vicinity of Betano, the utmost vigilance was to be observed. Air reconnaissance was to be arranged between Darwin and Timor between 30 November and 1 December 1942.²⁰

Description of the action

- 17-27 At 0915 on 30 November, when *Armidale* and *Castlemaine* were about 120 nautical miles from Betano, a single Japanese reconnaissance aircraft was detected. A high-level bombing attack followed. No damage was sustained. Sullivan reported his discovery by the Japanese and signalled Darwin for further orders, while offering the opinion that the prospects for the operation were doubtful.²¹ Pope replied that fighter protection was being sent, the operation must proceed, and the risk must be accepted. The corvettes were then subjected to two more attacks, each by formations of five bombers (according to *Armidale*) and nine planes in

²⁰ Darwin Operation Orders 18, 19 and 20, 28 November 1942, NAA: MP 1185/8 2026/9/336.

²¹ Report of Proceedings, HMAS *Castlemaine*, 7 December 1942, NAA: MP1185/8 2026/9/336.

'V' formation (according to *Castlemaine*).²² In one instance, the attacks were driven off by RAAF fighters. No damage or casualties were sustained in these attacks. Brief signal messages from the corvettes regarding the attacks were passed through to naval authorities and many are still retained in the corresponding Navy Office file.²³

- 17-28 *Kuru* arrived at Betano around 2330 on 30 November, three hours late, owing to inclement weather and making an earlier stop at Keelan after seeing signal fires on the beach there. Grant was informed by troops at Keelan that Northern Territory Force (based in Darwin) had advised them to light the fires.²⁴ Having arrived late at Betano, Grant did not know whether the corvettes had already arrived and left after not finding *Kuru* there. He proceeded to embark 77 Portuguese refugees and one wounded Australian soldier, and decided to return to Darwin. He sailed sometime around 0200 on 1 December, after advising Pope by signal via friendly forces on the beach. In reply, Pope ordered him to repeat the operation that night (1–2 December) and then ordered the corvette HMAS *Kalgoorlie* (commanded by Lieutenant Harold Litchfield, RANR[S]) closer to the area to provide 'general support.'
- 17-29 *Castlemaine* and *Armidale* arrived around 0300 on 1 December, after *Kuru* had already departed. Seeing no trace of *Kuru* or the signal fires, the corvettes moved as far south as possible to try and avoid the oncoming dawn revealing their position. At dawn, all three ships finally made a rendezvous some 70 miles off the coast of Betano, where the refugees were transferred from *Kuru* to *Castlemaine*.
- 17-30 The transfer of the refugees to *Castlemaine* was barely completed when enemy bombers appeared, and *Kuru* ran for the cover of a rain squall. Sometime afterwards, *Armidale* and *Kuru* were then ordered by Sullivan, following confirmation from Pope, to return independently to Betano to complete the operation.²⁵ *Castlemaine* was to search for two airmen from a missing Beaufighter some 150 miles south-east of Betano on her way back to Darwin.²⁶ After these instructions were confirmed, Sullivan asked Pope for additional fighter protection for *Armidale*. The day before, Sullivan had requested fighter protection during daylight hours.²⁷ Flights of Beaufighters were tasked; however, as Pope would later remark, 'due to the distances involved, it was not possible to provide anything like continuous fighter protection'.²⁸
- 17-31 At 1228 *Kuru* was bombed some 90 miles south of Betano while proceeding independently of *Armidale*. As the day wore on, *Kuru* suffered further attacks and Grant later estimated that over the near seven-hour period, *Kuru* had been the 'object of attention of 44 bomber aircraft in 23 individual attacks, and that she was the target for approximately 200 bombs.'²⁹ *Kuru* suffered some engine damage in one of the early attacks, and despite advice from Grant that he was returning, at around 1630 Pope ordered the operation be continued. Grant sent at least five

22 Gill, *Royal Australian Navy 1942–1945*, p 215.

23 Loss of 'Armidale', NAA: MP 1185/8, 2026/9/336.

24 Report of Proceedings, HMAS *Kuru*, 5 December 1942, NAA: MP 1185/8, 2026/9/336.

25 NT 0572/6 — Operation Hamburger, dated 3 December 1942, NAA: MP1185/8, 2026/9/336, p 2

26 Gill, *Royal Australian Navy 1942–1945*, p 216.

27 Attachment to Report of Proceedings of HMAS *Castlemaine* 7 December 1942, NAA: MP 1185/8 2026/9/336.

28 NT 0572/6 — Operation Hamburger, 3 December 1942, NAA: MP1185/8, 2026/9/336.

29 Gill, *Royal Australian Navy 1942–1945*, p 217.

signals through the Naval Communications Station at HMAS *Coonawarra* advising that he was under attack, three of which requested help.³⁰ At 2005 on 1 December, news of Japanese cruisers in the area forced Pope's hand, and *Armidale* and *Kuru* were ordered to return to Darwin. However, at that time, Pope was not aware of the fate that had already befallen *Armidale*.

Armidale's last movements and the fate of the survivors

- 17-32 After *Armidale* and *Kuru* parted company, *Armidale* had 149 personnel aboard including Richards, the ship's company of four other officers — Lieutenant William Whitting, RANR(S) (First Lieutenant), Lieutenant Lloyd Palmer, RANR (Gunnery Officer), Lieutenant Harry Jenkyn, RANR (Engineer), Sub-Lieutenant James Buckland, RANVR — and 78 men; 2 officers and 61 men of the Netherlands East Indies (NEI); and 3 members of the Australian Imperial Force (AIF).³¹
- 17-33 At 1315 when *Armidale* was at 10° 15'S, 126° 08'E — 70 miles south-south-east of Betano, it was attacked by a high formation of five enemy bombers, but was undamaged. This attack was not considered a determined attack, and Richards reported the 'Oerlikon fire very effective and two planes were forced to jettison their bombs, both losing height rapidly, one wobbling badly when last observed'.³² Following this attack, Richards signalled that it was absolutely essential that adequate fighter protection be provided continuously as large formations of the enemy were being used.³³
- 17-34 The second and final attack developed at 1450 when one float plane, nine bombers, and three Zero Fighters were sighted. The bombers were flying nine abreast at about 6,000 feet, and they flew past on the port side of the ship beyond gun range. They remained out of range on the port side for about 15 minutes passing to about 15 degrees on the starboard bow, they then turned to port and disappeared over the port quarter. Three or four minutes later they reappeared on the port quarter and manoeuvred up the port side again to about 20 degrees on the starboard bow, again remaining outside the gun range. Three then dropped astern of the other six for a few minutes. At this stage the Zeros were not in formation.
- 17-35 When the aircraft were first sighted, Richards held his course steady watching to find out what the attackers would do. At 1505 the Japanese began to attack from three different directions, in three groups of three. Richards then manoeuvred *Armidale* with a short zigzag and also ordered full port wheel at the time he judged that the attacking aircraft were at their dropping points, but to no avail. *Armidale* was hit by a torpedo on the port side just forward of the bridge. A minute later *Armidale* was hit again on the port side, between the engine room and the boiler room. A third torpedo from the port side missed ahead. A fourth torpedo missed astern and a fifth torpedo passed over the bridge. *Armidale* also came under aerial bombardment, with a bomb narrowly missing the whaler on the starboard side.

30 Signals — HMAS *Coonawarra*, 0832Z/1, untimed, 0812Z/1, 0756Z/1, 0521Z/1, NAA: MP1185/8, 2026/9/336.

31 HMAS *Armidale* personnel on board at start of the voyage, NAA: MP1185/8, 2026/9/336.

32 Report of Enemy Air Attack on HMAS *Armidale* (CAFO 1895/40), by Lieutenant Commander D Richards, and submitted to the Secretary of the Australian Commonwealth Naval Board by NOIC Darwin, NAA: MP1185/8, 2026/9/336.

33 'Signal HMAS *Coonawarra* 0307Z/1', NAA: MP1185/8 2026/9/336.

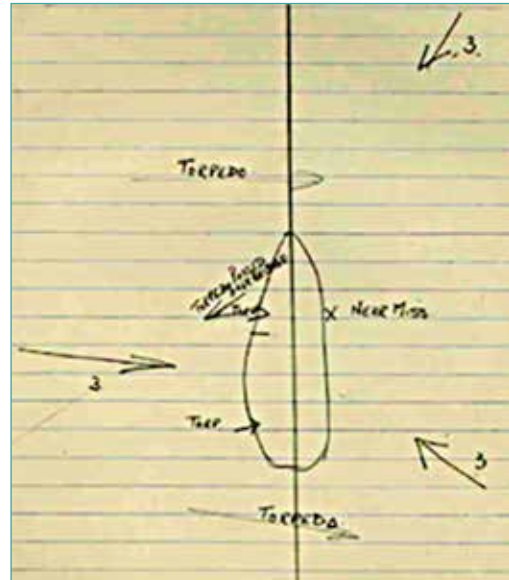
This action was illustrated by Lieutenant Whitting, who witnessed the attack.

17-36 After the first torpedo hit, the ship listed rapidly to port, and the second hit most likely broke the ship's back. When *Armidale* reached 50 degrees of heel, Richards ordered, 'Abandon ship'. Richards, Whitting, and Palmer all later estimated that the time from the first torpedo to the sinking of the ship was only a matter of three to four minutes.³⁴

17-37 Sheean's action station was as a loader on the centreline aft Oerlikon AA gun. When the order to abandon ship was given, Sheean is recorded as being on the deck with Able Seaman Edward (Ted) Pellet, who was using a tomahawk to release the motor boat. Sheean was then seen by Pellet returning to the gun rather than abandoning ship with him.³⁵ Leading Signalman Arthur Lansbury, who was piping 'abandon ship' throughout the ship, saw Sheean strap himself into the firing position of the Oerlikon gun (not his normal action station) and commence firing. Lansbury also says that Sheean had been 'hit in the back' but continued firing the gun.³⁶ One witness, Stoker Ray Raymond, who having abandoned ship and was in the water on the port side, said that Sheean shot down one Japanese plane and possibly damaged two others.³⁷ Another witness, Wireman Bill Lamshed, says that he saw the aft Oerlikon shoot down a Zero Fighter, and that he later learnt that it was Sheean who had strapped himself into the Oerlikon and shot down the aircraft. Richards reported 'Anti-Aircraft fire excellent — one bomber and one fighter were hit, and were both definitely observed to crash into the sea.'³⁸ Richards credited Sheean as 'bringing down one enemy bomber'. He also stated that 'he continued firing until he was killed at his gun'.³⁹

17-38 Following the order to abandon ship, all available life-saving gear was released. 'The enemy machine-gunned personnel in the water for about 10 to 15 minutes'.⁴⁰

17-39 Richards was able to send at least two signals while *Armidale* was under attack; the first declaring an emergency, giving his position and advising that no fighters



Path of attacking aircraft [3], two hits by torpedoes on the port side and misses.

(Sketch drawn by Lieutenant Whitting before the subsequent Board of Inquiry.)

34 Report of the Board of Inquiry, 8 December 1942, Enclosure (ii) to NT 0156/17 Operation Hamburger — Loss of HMAS *Armidale*, 14 December 1942, NAA: MP1185/8, 2026/9/336.

35 Frank Walker, transcript of interview included with Submission 128; interview with Frank Walker in the 1980s.

36 *ibid.*

37 Ray Raymond, letter 31 May 2008, included with Submission 128.

38 Report of enemy air attack on HMAS *Armidale* (CAFO 1895/40), by Lieutenant Commander D Richards, submitted to the Secretary of the Australian Commonwealth Naval Board by Naval Officer in Charge Darwin, NAA: MP1185/8, 2026/9/336.

39 Report of Proceedings of HMAS *Armidale* 29/11/42 to 1/12/42, Lieutenant Commander D. Richards, 11 December 1942, Enclosure (v) to NT 0156/17 Operation Hamburger — Loss of HMAS *Armidale*, 14 December 1942. NAA: MP1185/8, 2026/9/336.

40 *ibid.*

had arrived. The second, probably *Armidale*'s last ever signal sent at around 1500, reiterating that there was absolutely no fighter support.⁴¹ Ninety minutes later, after *Armidale* sank, Pope replied:

You are to proceed to Betano to carry out this important operation ... Air attack is to be accepted as ordinary routine secondary warfare. *Armidale* be prepared to begin operation without assistance of *Kuru*.⁴²

- 17-40 *Armidale*'s failure to signal 'attack ceased' appears not to have had any bearing on subsequent actions by Pope, COMSOUWESPAC, or the Australian Commonwealth Naval Board (ACNB). For full discussion see paragraphs 17-45 to 17-52.
- 17-41 Once the air attacks finished, the survivors set about concentrating together, seeking debris to make the motor boat, whaler, rafts and Carley float useful for their survival. Nearly a day later, at 1230 on 2 December, 'as no assistance had arrived' Richards decided to make towards Darwin in the motor boat.⁴³ The plan for the motor boat to detach was reported as being agreed by all. Accompanying Richards were Whitting, 17 RAN ratings and 3 NEI soldiers. Despite sighting Allied planes and ships on 5 December, the cohort on the motor boat was not picked up until 2300 on 6 December by HMAS *Kalgoorlie*; one RAN rating and one NEI soldier had since died.
- 17-42 Lieutenant Palmer (Gunnery Officer) was in the whaler following the sinking. In his 'Report of Proceedings of the Whaler ex-HMAS *Armidale*',⁴⁴ Palmer stated that on 5 December he decided to 'take the whaler and try to reach our own reconnaissance area', meaning he and those in the whaler would separate from the other survivors on the raft and Carley float. Palmer, with 25 RAN ratings and 3 AIF personnel on the whaler, were rescued on 8 December at 1700 by the *Kalgoorlie*; they reached Darwin at 1115 on 9 December.
- 17-43 Palmer also stated that Sub-Lieutenant Buckland was left in charge of the raft with 26 RAN personnel and the Carley float with 3 officers and 18 soldiers from the NEI. On 7 and 8 December the raft was seen and photographed by aircraft, but the subsequent search failed to relocate it. Neither the raft nor the Carley float were seen again.
- 17-44 Of the 149 personnel onboard *Armidale*, only 49 were rescued. Table 17-1 details the fate of those onboard HMAS *Armidale*.

41 Signals, HMAS *Coonawarra* 0400Z/1, 0425Z/1, NAA: MP1185/8, 2026/9/336.

42 Report of Proceedings, HMAS *Castlemaine*, 7 December 1942; *ibid*.

43 Report of Proceedings of HMAS *Armidale* 29/11/42 to 1/12/42, Lieutenant Commander D Richards, 11 December 1942, Enclosure (v) to NT 0156/17 Operation Hamburger — Loss of HMAS *Armidale*, 14 December 1942, NAA: MP1185/8, 2026/9/336.

44 Report of Proceedings of Whaler ex HMAS *Armidale* from 2nd December to 9th December 1942, Lieutenant L Palmer, 11 December 1942, Enclosure (vi) to NT 0156/17 Operation Hamburger — Loss of HMAS *Armidale*, 14 December 1942. NAA: MP1185/8, 2026/9/336.

Table 17-1 The fate of those onboard HMAS *Armidale*

Fate of personnel onboard <i>Armidale</i>	Ship's company		Netherlands East Indies (NEI)		Australian Imperial Forces (AIF)
	Officers	Men	Officers	Men	Men
Died during the attack or in the following days	1 Jenkyn	10 ^a		40	
On the raft — lost at sea	1 Buckland	27			
On the Carley float — lost at sea			2	19	
On the motor boat — picked up by HMAS <i>Kalgoorlie</i>	2 Richards & Whitting	16		2	
On the whaler — picked up by HMAS <i>Kalgoorlie</i>	1 Palmer	25			3
Total	5	78	2	61	3

^aIncluding the two lost in the motor boat

The actions of Naval Officer-in-Charge Darwin, Commodore Pope

1 December 1942

17-45 As discussed at paragraph 17-39, at approximately 1630 on 1 December, Pope ordered *Armidale* and *Kuru* to continue the operation, even after *Armidale* did not signal 'attack ceased' or make any further reports after the attack.⁴⁵ At 2005 he ordered their return due to the report of Japanese cruisers in the area.

2 December 1942

17-46 Although Pope had not heard from *Armidale*, he acted as though the ship was still operating, and in order to provide protection for *Armidale*'s return passage, Beaufighters carried out a dawn raid on the Japanese airfield at Koepang.⁴⁶ On the same day, *Castlemaine* arrived in Darwin at around 0940. At 1900, Pope sent a signal to *Armidale* directing that the ship return via Cape Fourcroy, if desired by Richards.

3 December 1942

17-47 At 0230 on the morning of 3 December, Pope ordered *Armidale* by signal to report her position, course and speed.⁴⁷ At around noon, he sent a signal to the ACNB

⁴⁵ NT 0572/6 — Operation Hamburger, 3 December 1942, NAA: MP1185/8, 2026/9/336.

⁴⁶ *ibid.*

⁴⁷ *ibid.*

and COMSOUWESPAC speculating *Armidale* might have been sunk by aircraft, or damaged and subsequently located by enemy cruisers. It was around this time, almost two full days after *Armidale* had been sunk, that Pope initiated the search.⁴⁸

- 17-48 In the evening of 3 December, after *Kuru* had arrived in Darwin at about 1730, Pope despatched a written report on operations to the ACNB, copied to COMSOUWESPAC.⁴⁹ The report explained why Pope believed the corvettes arrived late at Betano. His reasons were that the corvettes had come under aerial attack, and, in taking evasive action, were no longer able to effect the planned rendezvous.
- 17-49 Pope reported the attack on the airfield at Koepang. He also reported that having heard nothing from *Armidale*, he began to suspect the corvette had been sunk or damaged, possibly on the afternoon of 1 December.
- 17-50 Pope went on to say that the RAAF had provided maximum air support with repeated flights of fighters during the day, but in view of the distance involved it was impossible to provide anything like continuous fighter protection. Pope stated that Beaufighters attacked enemy planes on several occasions and that clearing searches by Hudsons (light bombers) were deployed against surface craft (which were the cruisers Pope had learned about on the afternoon of 1 December).
- 17-51 Pope finally concluded that further Timor operations were likely to be very difficult. In light of this, and the fact that he had been advised that faster Fairmile motor launches would not be made available, he requested a destroyer from COMSOUWESPAC. Pope stated that he was hesitant to ask for this destroyer in light of the experience of *Voyager*.⁵⁰ Pope advised that further operations would comprise of one auxiliary vessel at a time, and that if anything prevented its arrival on the evening planned it would not repeat the operation the following night but return to base for a new start some days later.

4 December 1942

- 17-52 On the morning of 4 December, Pope advised the ACNB and COMSOUWESPAC via signal that nothing further had been seen or heard of *Armidale*, and that a report of operations was being despatched via safehand mail that day.⁵¹ Pope later sent a signal about the urgent requirement to evacuate almost 850 troops and refugees from Timor. Pope reported that, at a conference at Headquarters Northern Territory Force, it was agreed that it was extremely risky that auxiliary vessels be sent to undertake these duties due to their slow speed and the high probability of interception by air and sea, and that effective air support was impracticable for the period during which these ships were most vulnerable. Pope therefore requested that a destroyer be sent to Darwin to run about three trips, and advised that the Air Officer Commanding considered that reasonable air protection could be implemented if a destroyer was sent. Pope went on to advise that if provision of a destroyer was impossible, then a flying boat should be despatched to evacuate

48 Signal, Naval Officer in Charge Port Darwin 0106Z/3, NAA: MP1185/8 2026/9/336.

49 *ibid.*

50 HMAS *Voyager* was lost on 23 September 1942, run aground in Betano Bay while disembarking reinforcements as part of Hamburger operations. A subsequent Board of Inquiry found that the loss of this vessel was due to the negligence of the commanding officer and the navigator.

51 Signal, Naval Officer in Charge Port Darwin 2255Z/3, NAA: MP1185/8 2026/9/336.

the most urgent medical cases, and that it would appear the risk of using auxiliary vessels must be accepted to attend to the remainder.⁵²

- 17-53 On the same day, Mr Thomas Hawkins, on behalf of the Secretary of the Department of the Navy, advised the Secretary of the Department of Defence, Frederick Shedden, that information had been received from Pope that *Armidale* was attacked by aircraft several times on 1 December 1942 and that she was now missing. The advice said that she was ordered to return to Darwin and to report her position on 2 December, but repeated attempts to communicate had been unsuccessful and that air searches had failed to locate the vessel. This was incorrect advice, as the request for her position was not sent until the early hours of 3 December. It is possible that the drafter of this message erred because the date/time indicator on Pope's signal was in Zulu (Greenwich mean) time, which was ten and a half hours behind local time. The report speculated that *Armidale* might have been sunk by aircraft or damaged and subsequently located by enemy cruisers.⁵³

5 December 1942

- 17-54 On 5 December, Pope advised the ACNB and COMSOUWESPAC that aircraft had located a boat of survivors, and that *Kalgoorlie* had been despatched to the position of the sighting. The same day, the ACNB advised Pope that Lieutenant McCabe, of Lancer Force (operating on Timor), had reported that the Japanese made a daily aircraft reconnaissance of the south coast of Timor from dawn to dusk, particularly in the Betano area, and that ships involved in Hamburger operations had been sighted by enemy aircraft and ground observers.⁵⁴
- 17-55 Following Pope's request for a destroyer, Vice Admiral Carpenter ordered the Dutch destroyer HNLMS *Tjerk Hiddes* to sail from Fremantle to Darwin to undertake Hamburger operations.

6 December 1942

- 17-56 On 6 December 1942, while the search was still going on and prior to the return of any survivors, Pope, as a convening authority signed a document instructing Commander Laurence Tozer, RAN, of HMAS *Melville* to convene a BOI to 'hold a full and careful investigation into the circumstances attending the loss of HMAS *Armidale*, calling before him such witnesses as are necessary to enable him to form a correct conclusion.'⁵⁵ Assisting Tozer were Acting Commander Jack Donovan, RAN, and Lieutenant Commander John Malley, RN. All three officers were junior in rank to, and under the command of Pope. Tozer and Malley had previously sat on the *Voyager* BOI with Litchfield of *Kalgoorlie*. In particular (and if possible) the BOI was directed to address:
- the time and date of sinking;
 - the approximate position of the sinking;

52 Signal, Naval Officer in Charge Port Darwin 0201Z/4, NAA: MP1185/8 2026/9/336.

53 Signal, Naval Officer in Charge Port Darwin 0106Z/3, NAA: MP1185/8 2026/9/336.

54 Signal, Australian Commonwealth Naval Board 0506Z/5, NAA: MP1185/8 2026/9/336.

55 NT 0156/17 — Memorandum dated 6 December 1942, enclosure (i) NT 0156/17 Operation Hamburger — Loss of HMAS *Armidale*, 14 December 1942, NAA: MP1185/8, 2026/9/336.

- was the sinking the result of air attack only or was the ship also attacked by surface craft;
- what interval, if any, elapsed between the last attack and time of sinking;
- was the enemy aware that the ship was sunk;
- if it could be confirmed that the confidential books on board at the time were specifically destroyed; and
- was there any description of enemy formations and methods of attack which might be useful for future guidance.

17-57 On the evening of 6 December, Pope advised the ACNB that some survivors had been found by Allied aircraft, but *Kalgoorlie*, which had been bombed but not hit, was still 57 nautical miles away from the survivor's reported position. Pope advised that the air search would continue the next day, and that the auxiliary vessel *Vigilant* would relieve *Kalgoorlie* if the survivors were not located early that day. Pope also advised that in order to avoid further losses, the ships would retire towards Darwin if sighted by the enemy. Shortly afterwards, *Kalgoorlie* signalled Pope that 20 survivors (including Richards) had been rescued from the motor boat.

7 December 1942

17-58 It is possible that Sullivan took into account his earlier signal advice to Pope on 30 November that the prospects of the operation were doubtful. In his Report of Proceedings (ROP) of 7 December, Sullivan (the Commanding Officer [CO] of HMAS *Castlemaine*, who had arrived at Darwin five days earlier) submitted that the entire operation should be the subject of an inquiry.

17-59 The same day, Pope signalled the ACNB with a brief account of *Armidale*'s last action, which was provided by Richards from *Kalgoorlie* while enroute to Darwin. Pope advised the ACNB that the BOI was to convene the following day to 'permit the recovery of witnesses'.⁵⁶ Pope also advised the ACNB and COMSOUWESPAC of news from Richards 'that a raft containing 80 men was left in position 010 degrees south 126 degrees 30 minutes east at 0209Z on the 4th? (sic). With only a small quantity of foodstuff and water'. Pope observed that their chance of survival was slender and advised that he would not risk a surface vessel for this search. Pope also put forward the view that sending a surface vessel would further draw attention to impending Hamburger operations. Pope instead requested a Catalina flying boat from COMSOUWESPAC to affect the rescue if an air search was successful.⁵⁷

17-60 *Kalgoorlie* arrived in Darwin at 1330 with Richards and the motor boat survivors on board. At around 1500, a raft and wreckage (probably the Carley float) was sighted by an aircraft. Pope immediately ordered *Vigilant* to the position, but soon afterwards cancelled the order, having learned that a Catalina had been sent from Cairns.⁵⁸

17-61 Also the same day, the ACNB advised Pope and COMSOUWESPAC that a complete publicity ban was being imposed in relation to the 'HMAS *Armidale* story'. Pope

⁵⁶ Signal, Naval Officer in Charge Darwin 0550Z/7, NAA: MP1185/8 2026/9/336.

⁵⁷ Signal, Naval Officer in Charge Darwin 0200Z/7, NAA: MP1185/8 2026/9/336.

⁵⁸ Signal, Naval Officer in Charge Darwin 0907Z/7, NAA: MP1185/8 2026/9/336.

replied that he had forbidden war correspondents to interview anyone, and asked whether controlled interviews of survivors from *Armidale* and *Kuru* were permissible, as per the terms of Admiralty Fleet Order 1795A/40 paragraph 4. This was agreed by the ACNB.

8 December 1942

- 17-62 On 8 December, Pope advised that the Catalina had located the raft but was unable to land and effect a rescue due to the sea state. Pope advised that he then directed *Vigilant* to the raft's estimated position. *Kalgoorlie* was also despatched.
- 17-63 The same day, the ACNB advised the Admiralty of the loss of *Armidale*. The Prime Minister also advised the Advisory War Council of a report furnished by the First Naval Member and Chief of Naval Staff, Vice Admiral Sir Guy Royle, RN, regarding *Armidale*'s loss.⁵⁹
- 17-64 The BOI commenced its deliberations on 8 December, and had before it written reports from the COs of *Castlemaine*, and *Kuru*, Darwin Operating Order No. 20 to CO *Armidale* and the brief by NOIC Darwin to the ACNB of 3 December.
- 17-65 During the BOI Lieutenant Commander Richards, Lieutenants Whitting and Palmer and four men from the *Armidale* were called as witnesses. Two other officers— Lieutenant Commander Charles Reid, RAN, (in relation to *Armidale*'s signals) and Paymaster Lieutenant John Scott, RANR, (in relation to *Armidale*'s confidential books) — were also called.
- 17-66 The members of the BOI submitted their report to Pope on the same day. Palmer's evidence was added later due to his delayed arrival ex-*Kalgoorlie*; he was not interviewed until 10 December. The BOI concluded that Richards took all reasonable steps for the safety and the fighting of his ship and that 'for the particular circumstances obtaining (sic) at this time', *Armidale*'s armament left 'something to be desired'. The BOI did not (and, because of its composition and terms of reference, could not) examine critical issues such as the propriety of conducting this operation with these vessels in the first place. Despite this, the BOI did make some observations of this nature in its report stating:
- The Board fully realise that certain operations in war must be carried out whether or not fighter protection is afforded. The evidence, in this case, discloses that fighter protection was not provided to the extent necessary. It would seem that fighter protection is essential for operations of this nature where types of vessels similar to *Armidale* are employed. Had *Armidale* had continuous fighter protection it is highly probable that the operation would have been successfully carried out.⁶⁰
- 17-67 That night, the Catalina located the whaler under sail. Pope despatched *Kalgoorlie* to carry out a coordinated rescue with the aircraft.⁶¹ This left *Vigilant* to search for the raft.

59 Advisory War Council Minute, 8 December 1942, NAA: A5954, 518/18.

60 The Report of the Board of Inquiry, contained in NT 0156/17 Operation Hamburger — Loss of HMAS *Armidale*, dated 14 December 1942, NAA: MP1185/8 2026/9/336.

61 Signal, Naval Officer in Charge Darwin 1302Z/8, NAA MP1185/8 2026/9/336.

9 December 1942

- 17-68 On 9 December, Pope advised the ACNB and COMSOUWESPAC that *Kalgoorlie* had picked up 26 naval personnel and 3 AIF personnel from the whaler and that the search was continuing for the Carley float and the raft under difficult conditions.⁶² *Kalgoorlie* then returned these survivors to Darwin.

10–13 December 1942

- 17-69 On 10 December Pope advised that the day's search for remaining survivors was unsuccessful, and that *Vigilant* was to return to Darwin due to serious engine defects.⁶³ The following day, the news was no better, and *Kalgoorlie* was despatched to relieve *Vigilant*.⁶⁴ Further searching on 12 and 13 December bore no success, and the search was then abandoned.
- 17-70 Commencing operations in support of Operation Hamburger on 10 December, the faster and more capable *Tjerk Hiddes* was able to complete three trips to Betano, successfully evacuating approximately 950 persons, in Pope's words, 'with great efficiency'.⁶⁵

14 December 1942

- 17-71 Pope sent the BOI Report, together with Richards's ROP and a number of other documents, to the ACNB on 14 December 1942. Pope stated in his covering letter that although Richards's ROP was not before the BOI at the time of the inquiry, Richards was present as a witness.⁶⁶
- 17-72 Pope also mentioned that there were four principal matters at issue in connection with the loss of the ship and the operation as a whole. In summary, these were the actions of Richards, Sullivan and Grant, as well as his own in continuing the operation in the face of known risks.
- 17-73 Pope exonerated Richards of all blame and supported his decision to leave the whaler, Carley float and raft behind and go for help in the motor boat. Pope also opined that Sullivan's comment in his ROP, which called for an inquiry, was not subversive of discipline but might have been better expressed. Pope lauded Grant's actions while *Kuru* was under attack. Grant was later awarded a Mention in Despatches for his courage and skill 'when attacked by Japanese bombers'.⁶⁷
- 17-74 With regard to his own actions, Pope noted that this was not a 'matter for any authority at Darwin to decide' but made some general observations. He offered several reasons for proceeding with the operation, including the urgent need to support the outnumbered troops on Timor, the dire predicament of the refugees, and the hope that the small, manoeuvrable vessels involved would be able to escape serious damage. Pope stated that without the use of torpedo bombers — 'a new factor in these waters', this probably would have been the case.⁶⁸

62 Signal, Naval Officer in Charge Darwin 1102Z/9, NAA: MP1185/8 2026/9/336.

63 Signal, Naval Officer in Charge Darwin 1310Z/10, NAA: MP1185/8 2026/9/336.

64 Signal, Naval Officer in Charge Darwin, 1231Z/11, NAA: MP1185/8 2026/9/336.

65 Signal from Pope, quoted in Gill, *Royal Australian Navy 1942–1945*, p. 221.

66 NT 0156/17 Operation Hamburger — Loss of HMAS *Armida*, 14 December 1942, NAA: MP1185/8 2026/9/336.

67 *London Gazette* no. 36038, 28 May 1943, p. 2527.

68 Minute, NT 0156/17, Naval Officer in Charge Darwin, 14 December 1942, NAA: MP 1185/8, 2026/9/336.

- 17-75 As a footnote to the report, Pope stated that as an indication of the intensity of the air search, aircraft made 43 sorties and flew more than 40,000 miles over 300 hours.⁶⁹

15 December 1942

- 17-76 On 15 December, the ACNB advised the Department of Defence that following advice from Pope, a further air and surface search for survivors of *Armidale* had proved unsuccessful, and that, reluctantly, the search had been abandoned. Two officers and 38 men from *Armidale*, and 2 Dutch Army officers and 58 Dutch troops were therefore considered lost.⁷⁰

Report to the Prime Minister

- 17-77 On 16 December, before Pope's report of 14 December had been received in Navy Office, Commander Emile Dechaineux, RAN, a senior staff officer in Navy Office, drafted a report on the loss of *Armidale*.⁷¹ This was very much a preliminary report because on 23 December Royle directed the Deputy Chief of Naval Staff (DCNS), Captain Reginald Nichols, RAN, that when Pope's final report arrived, a report was to be prepared for the Prime Minister. It was to 'consist of a brief covering minute rather like A [i.e. Dechaineux's draft] with Pope's I and II reports as appendices'.⁷²
- 17-78 In the meantime, on 17 December the Prime Minister requested advice as to when he could release a message of sympathy to the next of kin.⁷³ This request caused some problems in Navy Office because *Armidale* was assigned to COMSOUWESPAC and communiqués about operations were released by General MacArthur. After some consideration in Navy Office regarding the sensitivity of a public statement, a draft statement was provided to the Prime Minister's Office for release once next of kin had been advised by Navy, and after consultation with COMSOUWESPAC. The draft report stated: 'Observing that communiqués on such subjects of this nature emanate from General Headquarters it is presumed that Prime Minister will discuss matter with General MacArthur before release'.⁷⁴
- 17-79 On 24 December, Curtin published his media statement, which was prepared by Navy Office. It simply announced that *Armidale* had been lost at sea, south of Timor, and that survivors had been rescued. In a subsequent signal, the ACNB informed Pope that the statement made no reference to *Armidale*'s duties and that any controlled interviews were to be referred to the publicity censor in Melbourne.⁷⁵
- 17-80 By now, Pope's report had reached Navy Office, but Captain Nichols realised that in drafting the report for the Prime Minister it would not be 'really suitable' to enclose Pope's report as an appendix 'as it discusses points raised in the

69 Minute, NT 0156/17.

70 Teleprinter message, Colonel Wilson, 15 December 1942, NAA: A5954 518/18.

71 Minute, 'Loss of *Armidale*', Dechaineux to the Chief of Naval Staff, 16 December 1942, NAA: MP 1185/8, 395377.

72 Memo, Royle to DCNS, 23 December 1942, NAA: MP 1185/8, 2026/9/336.

73 Letter, Principal Private Secretary to the Prime Minister, 17 December 1942, NAA: MP1185/8 2026/9/336.

74 Teleprinter message, Secretary Department of Navy to Prime Minister's Private Secretary, 23 December 1942, NAA: MP1185/8 2026/9/336.

75 Signal, Australian Commonwealth Naval Board 0254Z/24, NAA: MP 1185/8, NAA: MP1185/8 2026/9/336.

6 different enclosures to his letter'. That is the report to the Prime Minister would be too unwieldy. Therefore, Nichols suggested using Dechaineux's draft as the starting point, adding more information to it.⁷⁶ This approach appears to have been agreed.

- 17-81 The next draft report was deficient in several respects. It merely restated the five broad conclusions in Pope's report, including Pope's observation on the need to conduct the operation. But the draft report did not actually state what happened, leaving this to be covered in attached records of proceedings. With regard to Pope's actions, the draft stated that the Naval Board considered 'that the carrying out of the operation with the forces available was a justifiable war risk'.⁷⁷
- 17-82 As a result, on 5 January 1943, Nichols advised Royle that the report contained 'somewhat more information than was called for by the Prime Minister in his recent letter and that if the report were forwarded as it stands, similar reports on future operations may cause the Naval Board some embarrassment.' With regard to the question as to whether Pope's actions were correct, Nichols pointed out that 'the operation was carried out with the full knowledge of COMSOUWESPAC, whose responsibility it was to provide additional forces, or alternatively cancel the operation if he thought fit'. On that basis, it was suggested that the part of the report which examined Pope's actions was to be omitted.⁷⁸ While the full concerns of the Deputy Chief of Naval Staff are not clear, part of the concerns clearly related to the fact that the ACNB was not responsible for naval operations in the South-West Pacific Area. Rather, responsibility rested with COMSOUWESPAC (Vice Admiral Carpenter), who, in turn, reported to General MacArthur. The restrictions caused by this command arrangement had already been pointed out when forwarding the draft press statement to the Prime Minister's office.
- 17-83 The final report to the Prime Minister, forwarded on 11 January 1943, was substantially different from the draft report mentioned by Nichols on 5 January. Rather, the final report was based substantially on Dechaineux's draft of 16 December, with additional material drawn from Pope's report. It was a factual, blow-by-blow account, with a comment on the BOI and its conclusions, which the Naval Board supported. There was no mention of the correctness of Pope's actions.
- 17-84 Earlier, on 26 December, Pope had assumed the position of Naval Officer-in-Charge Fremantle. It is not clear from the currently available records at what date this posting was promulgated.

Chain of command for honours and awards

- 17-85 For operational matters, Pope reported to the COMSOUWESPAC, while for national command and administrative matters he reported to the ACNB. The chain of command for honours and awards was from Richards, through Pope, to the ACNB. On approval of the ACNB, the recommendation was sent by the Secretary

⁷⁶ Minute, Nichols to the Chief of Naval Staff, 30 December 1942, NAA: MP1185/8 2026/9/336.

⁷⁷ Attachment to Navy Office Minute 5 January 1943, 'Loss of HMAS *Armidale*, report for the prime minister', NAA: MP 1185/8, 2026/9/336.

⁷⁸ *ibid.*

to the Department of the Navy to the Admiralty Honours and Awards Committee for consideration, then through the First Sea Lord to the King for approval.⁷⁹

Honours made for the action

- 17-86 Two officers and two men were awarded honours for their actions in Operation Hamburger from 29 November to 2 December — Whitting and Sheean from *Armidale*, and Grant and Engine Room Artificer Jack Crooks, RANR, from *Kuru*.⁸⁰ All received the MID, with Sheean's awarded posthumously.

Other recognition for Sheean and *Armidale*

- 17-87 In 2001, the Collins-class submarine HMAS *Sheean* was commissioned into the RAN. The ship's crest features an Oerlikon gun, and proclaims the motto 'Fight On' in honour of Sheean's last act. In a letter to Mr Garry Ivory, Commander Geoffrey Wadley, RAN, a former commanding officer of HMAS *Sheean*, mentioned that he had served in four of the six current submarines and that 'no other submarine crew holds its namesake closer than that of *Sheean*'.⁸¹
- 17-88 In 2005, the patrol boat HMAS *Armidale* (II) was commissioned as the lead boat of the current generation of patrol vessels. A bar in the junior sailor's club at HMAS *Cerberus* is also named in Sheean's honour. Other recognition for Sheean is discussed earlier in this report.

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

Arguments put forward in submissions for the award

- 17-89 The arguments contained in the submissions received for the award of the VC or other recognition for Sheean, are summarised as follows:
- The referral to the British Admiralty was silent on the type of award recommended and provided virtually no information to enable a proper assessment (Submission 78 and Nikolic oral submission).
 - Survivors were not consulted in putting forward the recommendations for awards (oral submissions — Ivory, Barnett and Nikolic).
 - The BOI was conducted under a veil of secrecy and with input only from survivors of more senior rank. Sheean's valour was not considered in this process (Submission 78).
 - Had Sheean been granted the VC, attention would have been focused on Pope. For this reason he was awarded a lesser honour (Submissions 128 and 128A).

⁷⁹ HMAS *Armidale*, Recommendations for awards to Lieutenant WG Whitting, RANR(S) & Ordinary Seaman E Sheehan (sic) H1617, TNA: ADM 1/14364.

⁸⁰ Whitting was awarded a Distinguished Service Cross for earlier service in temporary command of HMAS *Vendetta*.

⁸¹ Mr Garry Ivory, Submission 78.

- Sheean's actions compare most favourably with Leading Seaman Jack Mantle, RN, who was awarded the VC in very similar circumstances. (Submissions 78 and 128, and Barnett oral submission).
- By bringing down one, possibly more Japanese aircraft his sacrifice saved the lives of many of his mates (Submissions 78 and 106).
- Sheean's actions, displaying outstanding individual bravery, resoundingly meet the criteria for the VC. The Tribunal has the opportunity to right a wrong in the case of Sheean; he has been honoured, but not with the nation's highest award for gallantry (Submissions 27, 57, 58, 92, 128, 128A, 193 and 200). Not to do so would be an injustice to Sheean, his family, all Tasmanians, if not the entire Australian community (Submission 82).
- Sheean's selfless and heroic actions had a positive effect on his surviving shipmates (Submission 95).
- A survey among members of an RSL sub-branch placed Teddy Sheean as their first choice for the VC (Submission 89).

Arguments put forward in submissions against the award

- 17-90 The arguments contained in the submissions received against the award of the VC for Sheean provided the following views:
- If it is decided that the VC was denied because the administrative arrangements prevailing at the time were inappropriate and that current conditions should apply, then 'it is incumbent on the awards system to reassess all past award (sic) through a modern prism' (Submission 124).
 - Without wanting in any way to detract from the very real gallantry displayed by Ordinary Seaman Sheean during the action that led to the sinking of HMAS *Armidale* on 1 December 1942, it must be clearly understood by the Tribunal that the majority of claims made about Sheean's actions post the date of his death are inaccurate at best and in many cases preposterous (Submission 99).
 - The actions of Lieutenant Whitting were every bit as instrumental in saving the lives of those men who survived, in fact, probably more so, yet he received the same award as Sheean (Submission 99).

Tribunal consideration of the award's process

- 17-91 In considering the case for a possible VC for Australia or some other form of recognition for Ordinary Seaman Sheean, the Tribunal first conducted a process review as described in paragraph 8-44 of the Report.
- 17-92 Recommendations for honours from the Australia Station were administered under Commonwealth Navy Order (CNO) 43/42. The clauses of this Order directed commanders on procedure, timing of the recommendations for periodic awards, specified that commanders were not to suggest the nature of the award and listed the details to be included in the recommendation. CNO43/42 did not, however, provide guidance of how the recommendations were to be forwarded to higher authority (by letter, message, or form). To this end, there is evidence that commanding officers, in some cases, used the ROP (of a ship's total activity)

as the vehicle for recommendation. The recommendation for both Sheean and Whitting occurred in this manner. In his ROP, Richards said:

The behaviour and conduct of the ships' company was at all times of the highest order, and it is difficult to name any one act as more gallant than another, except those of Ordinary Seaman Edward Sheehan (sic), and Lieutenant WG Whitting, RANR(S).

Ordinary Seaman Sheehan (sic), although wounded, remained at his post at the after (sic) Oerlikon, and was responsible for bringing down one enemy bomber. He continued firing until he was killed at his gun.

Lieutenant Whitting, 1st Lieutenant, did excellent work in getting the lifesaving gear away in difficult circumstances, being wounded in two places and constantly under fire.⁸²

- 17-93 The Tribunal noted that Richards placed Sheean, who was only eligible for a VC or an MID, in merit order ahead of Whitting, an officer, in his recommendations. This provided a clear indication that Richards thought more highly of Sheean's gallantry than he did of Whitting's actions.
- 17-94 On 22 January 1943, Mr George Macandie, Secretary of the ACNB, at the direction of the ACNB, forwarded a 'copy of the ROP of HMAS *Armidale* for period 29 November to 1 December 1942 for consideration by the Lords Commissioners of the Admiralty of awards in accordance with the remarks of the Commanding Officer'. The ACNB noted that Whitting and Sheean (in that order) were the personnel recommended by Richards, but offered no other comment.⁸³ This was the practice employed by the ACNB for almost all recommendations forwarded to the Admiralty. The Tribunal could find no evidence of further consideration by the ACNB in respect of Sheean's actions, but considered the ACNB may have placed Whitting above Sheean in rank order because that was the Admiralty practice at the time for like honours. Nonetheless, because the ROP was also forwarded to the Admiralty, the Admiralty would have been aware of Richards's order of merit.
- 17-95 This record of the actions of Sheean and Whitting arrived at the Admiralty on 11 May 1943, and was subsequently considered by the Honours and Awards Committee. On 15 June, the committee decided that both would be awarded the MID, and the approval of the Sovereign was granted on 18 June 1943.⁸⁴ The awards were promulgated in the *London Gazette* of 29 June 1943, with Sheean's republished in the *London Gazette* of 23 July 1943 with the correct spelling of his surname.⁸⁵
- 17-96 The Tribunal therefore concluded that Sheean's nomination was passed through the proper channels, in the same manner as other RAN nominations for which the ACNB was responsible. For example, when placing Sheean's nomination against that of Leading Cook Emms (also sent through Pope), there is very little difference in the chain of correspondence.

82 Report of Proceedings HMAS *Armidale*, 11 December 1942, TNA ADM 1/14364.

83 Navy Office Minute 04053, 22 January 1943, TNA: ADM 1/14364.

84 Minute Honours & Awards 581/43, TNA: ADM 1/14364.

85 *London Gazette*, no. 36072, 29 June 1943, p. 2947; *London Gazette*, no. 36106, 23 July 1943, p. 3371.

- 17-97 With regard to the claim (Submissions 128 and 128A) that the recommendation and the ROP was silent on the nature of the decoration recommended, the Tribunal noted that this was the approach mandated by CNO43/42.
- 17-98 Elsewhere in the report, the Tribunal has commented on the lack of initiative by the ACNB in seeking recognition for RAN personnel, particularly when compared to the practices observed in other theatres such as the Mediterranean station under Admiral Cunningham. Unfortunately, the ACNB's practices saw only minor improvements very late in the war, after strong representations from commanders such as Captain Howden and Commodore Farncomb.
- 17-99 While the Tribunal placed no weight on the use of comparisons to assess the merits of a case, in coming to its conclusions the Tribunal found it useful to consider the processes followed by those in authority to assess broadly similar actions. In doing so, the Tribunal considered the processes for the award of the VC to Leading Seaman Jack Mantle of HMS *Foylebank* and to Petty Officer Alfred Sephton of HMS *Coventry*. Mantle's citation reads:
- Leading Seaman Jack Mantle was in charge of the Starboard pom-pom gun when HMS *Foylebank* was attacked by enemy aircraft on the 4th of July 1940. Early in the action his left leg was shattered by a bomb, but he stood fast at his gun and went on firing with hand-gear only: for the ship's electric power had failed. Almost at once he was wounded again in many places. Between his bursts of fire he had time to reflect on the grievous injuries of which he was soon to die but his great courage bore him up till the end of the fight, when he fell by the gun he had so valiantly served.⁸⁶
- 17-100 Sephton's citation reads:
- Petty Officer Sephton was Director Layer when HMS *Coventry* was attacked by aircraft, whose fire grievously wounded him. In mortal pain and faint from loss of blood, he stood fast doing his duty without fault until the enemy was driven off. Thereafter until his death his valiant and cheerful spirit gave heart to the wounded. His high example inspired his shipmates and will live in their memory.⁸⁷
- 17-101 As discussed in paragraphs 4-57 to 4-58 of this Report, in both of these cases, strong representations for higher recognition from senior officers were integral to the award being made. Neither Pope nor the ACNB made these representations in Sheean's case, but under the existing rules they were not required or mandated to do so.
- 17-102 It has been suggested that the ACNB was compromised in its handling of the loss of *Armidale* by its desire to protect both Commodore Pope and its own reputation, and, if this was the case, there was a deficiency in the process of handling Sheean's recommendation. In this regard, it has been suggested that the ACNB acted improperly in deliberately not providing a full version of events concerning the loss of the *Armidale* to the Prime Minister, who at the time was also the Minister for Defence.
- 17-103 By way of background, the Tribunal noted that, during 1942, Curtin had grown increasingly frustrated at the lack of reporting by senior naval authorities on the

⁸⁶ *London Gazette*, no. 34938, 3 September 1940, p. 5385.

⁸⁷ *London Gazette*, no. 35365, 28 November 1941, p. 6889.

circumstances surrounding the loss of a number of Australian warships including the cruisers *Sydney*, *Canberra* and *Perth*, the destroyers *Vampire*, *Voyager* and *Waterhen*, and the sloops *Yarra* and *Parramatta*.

- 17-104 With regard to the Australian Squadron, which included *Canberra* (sunk in August 1942), and which operated for a time under South (not South-West) Pacific Area command, the only reports received by the Australian Government were brief statements from MacArthur, who in turn received his information only because he had a copy of the South Pacific cypher. The Australian Minister in Washington was instructed to take up the problem with President Roosevelt and the US Chiefs of Staff. Neither MacArthur nor the Australian Government were able to obtain a copy of the report covering the loss of *Canberra*, causing the Australian Minister for External Affairs, HV Evatt, to cable Washington that 'the position is not satisfactory and is causing endless anxiety and embarrassment'. MacArthur had a high opinion of Royle's professional ability but thought that he and Carpenter were secretive with regard to naval information and that Royle 'opposed the disclosure of details of operations and sinkings'.⁸⁸
- 17-105 In October 1942, Curtin wrote to the Minister for the Navy, The Hon. Norman Makin, MP, requesting 'that immediate advice of losses of HMA ships and important aspects of their operations be forwarded to me as Minister for Defence', and that he would be glad if Makin would arrange with Royle for this to be done.⁸⁹ Finally, on 12 November 1942, Royle provided Makin with reports on the ships mentioned above.⁹⁰
- 17-106 Two contrary interpretations can be put on Royle's report to the Prime Minister on the loss of *Armidale*. The first interpretation is that, having been criticised for slow or deficient reports in the past, Royle was determined that the report on the loss of *Armidale* would be presented quickly, and also that it would become a model for future reports. Given that Australian naval operations were under the command of COMSOUWESPAC and not the Chief of Naval Staff, Royle wanted to ensure that he did not create a precedent of commenting on the conduct of those operations.
- 17-107 The second interpretation is that Royle deliberately failed to comment on the operations in which *Armidale* was lost in order to protect Pope, and more broadly the RAN from criticism. That is, Royle had a conflict of interest in his handling of Sheean's recommendation. Several factors count against this interpretation. If Curtin had concerns about operational matters he should have sought a report from General MacArthur, who had command of all Allied forces in the South-West Pacific Area. If the ACNB had concerns about Pope's conduct of Operation Hamburger, Royle should have taken up the matter with Vice Admiral Carpenter, who was, as noted earlier, Pope's superior commander for operations. Further, as far as can be discerned from the files, the ACNB accepted that Pope's conduct of Operation Hamburger was justified. The Tribunal therefore concluded that the first interpretation was the more likely.

88 For a fuller discussion of this matter see DM Horner, *High command: Australia and Allied strategy 1939-1945*, Australian War Memorial and Allen & Unwin, Canberra and Sydney, 1982, pp. 362-363.

89 Letter, John Curtin to Norman Makin, 14 October 1942, NAA: MP 1049/5, 1968/2/633.

90 Letter, Norman Makin to John Curtin, 12 November 1942, NAA: MP 1049/5, 1968/2/633.

- 17-108 For the sake of completeness, however, the Tribunal considered possible outcomes if indeed Royle did have a conflict of interest. If he had wanted to protect Pope he would not have forwarded the recommendations for Sheean and Whitting to the Admiralty; but indeed he did send the recommendations. It could be argued that if he did not have a conflict of interest he would have gone back to Pope and asked for further information on Sheean's action. However, there was nothing in *Armidale's* ROP to suggest that this action should have been taken, and as far as can be determined, Royle did not take this action with any other recommendations he considered during his term as Chief of Naval Staff. Further, it could be argued that Royle should have forwarded Pope's full report to the Admiralty with all its attachments. But there was nothing in Pope's report that would have led the Admiralty to change its decision to award Sheean an MID, and there was, therefore, no reason to send Pope's report to the Admiralty. There was no requirement to send Australian operational reports to the Admiralty. Finally, the recommendations for honours and awards were administered in a separate staff process under the Second Naval Member (who was not the DCNS), and in this case the same process was applied as occurred in every other case.
- 17-109 In an interview with Frank Walker, Arthur Lansbury indicated that if Sheean had received a VC the publicity would have focused attention on Pope, so a decision was made to give Sheean the only other available honour.⁹¹ Lansbury indicated that Richards confirmed this about 12 months after the loss of *Armidale*. The Tribunal considered this to be hearsay, and did not rely on it in coming to its conclusions.
- 17-110 Turning to the BOI in Darwin set up to examine the loss of *Armidale*, the Tribunal observed that it was insufficient in that it was not directed to consider what was arguably the most important factor in the loss of the *Armidale*, namely, the merit of conducting the operation in the first place. As was evident at the time of the BOI, other more capable assets were available (such as the Dutch destroyers *Tjerk Hiddes* and *Van Galen*) that were faster, better armed and stood a greater chance of survival. However, because Pope had set up the inquiry, to be conducted by officers junior to him, it could not be expected that it would examine higher aspects of the operations such as his command of it. The Tribunal found that the BOI's supplementary finding about inadequate fighter protection was probably as strong as it could have been under the circumstances.
- 17-111 The Tribunal also found it difficult to see how a body set up to inquire into the loss of a vessel could have completed its deliberations while the search for survivors was still ongoing, and that information could have been tendered by a key witness (Palmer) after those deliberations were effectively completed.
- 17-112 Again, as noted in paragraph 17-24, Pope came under the control of Vice Admiral Carpender for operations. It was up to Carpender to consider whether Pope's command of Operation Hamburger had been appropriate. Further, the question as to whether (in retrospect or with the advantage of hindsight) Pope's command of the operation was appropriate is immaterial as to the issue of the recommendations for Sheean and Whitting made at the time.

⁹¹ Frank Walker, transcript of interview included with Submission 128; interview with Frank Walker in the 1980s.

- 17-113 The Tribunal found that there were deficiencies in some of the subsequent reports about the loss of *Armidale*. In 1946, [mercantile] Captain Gilbert Paterson, whose son had been lost in the *Armidale*, wrote to the Minister for the Navy (then Arthur Drakeford, MP) about the delay in commencing the search and requesting an inquiry. Drakeford replied that, on 1, 2 and 3 December, aircraft specifically detailed to search for *Armidale* or her survivors were despatched. This could not have been the case as Pope did not consider *Armidale* missing until sometime on 3 December.⁹² No inquiry was ever convened, despite many letters from Captain Paterson and other families, and further consideration by the Naval Board and ministers.
- 17-114 Further, on 30 April 1946, Mr Alfred Nankervis, Secretary to the Department of the Navy, wrote to bereaved families who wanted to know more about the fate of those on the raft that 'the investigations of the Board of Enquiry (sic) reveal that all possible steps were taken to conduct a thorough search and rescue the survivors'.⁹³ The Tribunal found this statement to be inaccurate, given the search was not within the ambit of the BOI's investigations.
- 17-115 The Tribunal concluded there is no evidence that the recommendation to recognise Ordinary Seaman Sheean was not considered appropriately, was obstructed, or that maladministration, unfairness or injustice created a denial of process.

Tribunal review of the merits of the case

- 17-116 The merits review was carried out in accordance with the Tribunal's approach as described in paragraph 8-46 of the Report.
- 17-117 A number of issues were raised by submitters, or became apparent during the Tribunal's research, that require attention in considering the merits of this case. The Tribunal decided to examine each of these claims in considering the merits of Sheean's case. The Tribunal's examination is detailed in the following paragraphs.

Sheean's actions compare favourably with other Victoria Cross actions

- 17-118 Many submitters seeking further recognition for Sheean have argued that his actions during the loss of *Armidale* compare very favourably with others who were awarded the VC in broadly similar circumstances, particularly Leading Seaman Jack Mantle. As discussed elsewhere in this Report, the Tribunal found that it is not possible to come to a sustainable conclusion on the basis of comparisons between individual conduct in military actions and that an alleged precedent is not a basis for recommending retrospective recognition.

Richards's recommendation was insufficient

- 17-119 A number of submitters put forward to the Tribunal that the wording of Richards's recommendation, set out in his ROP and submitted after the BOI was complete,

⁹² Letter Arthur Drakeford, MP to Captain Gilbert Paterson, 31 October 1946, NAA: MP 151/1 429/201/943.

⁹³ Letters Mr AR Nankervis to Captain Gilbert Paterson, Mr William Jensen, Mrs T Gould etc., 30 April 1946, NAA: MP 151/1 429/201/943.

was not of sufficient quality to convey properly the gallantry shown by Sheean. A number of theories have been put forward for this shortcoming, including that:

- Richards was only a junior reserve officer, not accustomed to and unfamiliar with the kind of work needed to support a VC recommendation;
- Richards (or anyone else) did not interview survivors who have since attested to Sheean's gallantry; and
- the standing naval order did not allow Richards (or anyone else) specifically to mention Sheean for a VC.

- 17-120 As discussed in the Tribunal's process review (see above), the Tribunal found that the process observed by Richards was consistent with that observed at the time. CNO43/42 did not prescribe any special conditions for commanding officers to observe in respect of the VC. Recommendations for immediate recognition of valour were to be forwarded by commanding officers through administrative authorities as soon as possible after the incident, and were to define clearly the precise nature and quality of the action, enterprise, conduct or achievement.
- 17-121 It is not clear from the evidence available whether Richards himself saw Sheean shoot down the aircraft; however, the Tribunal placed significant weight on his ROP, which stated that although wounded, Sheean remained at his post at the aft Oerlikon, and was responsible for bringing down one enemy bomber (although it may actually have been a fighter) and that Sheean continued firing until he was killed at his gun.
- 17-122 With regard to the claims of some submitters that Richards did not consult broadly enough with his men about Sheean's actions prior to making his recommendation — given the passage of time, the Tribunal could not establish how broadly Richards discussed this matter with other survivors. However, the Tribunal found that as a commanding officer, it was Richards's prerogative to consult as broadly or as narrowly as he desired in coming to a satisfactory recommendation. Further, the description given by Richards in his ROP was broadly consistent — although told in fairly undramatic language — with that given later by witnesses.
- 17-123 The Tribunal found that Richards's description of Sheean's action in his ROP was deficient in that he did not mention that although Sheean's action station was at the aft Oerlikon gun, he was not the gunner, but a loader; Sheean did not remain at his post after the abandon ship order was given, but rather assisted Pellet to release the motor boat; once the boat was released, Pellet abandoned ship and Sheean returned to his action station; Sheean then strapped himself in to the gunner's position; Sheean fired the gun as the ship sank; Sheean went down with the ship. The Tribunal concluded that it was unlikely that Richards witnessed Sheean's action.
- 17-124 In its research, the Tribunal found that over the course of most of the Second World War it was common practice for commanding officers to put forward recommendations for honours in their ROPs and for intermediate authorities, such as Naval Officers-in-Charge and the ACNB, merely to forward those recommendations to the Admiralty without further comment.

- 17-125 The Tribunal noted that Richards placed Sheean, an Ordinary Seaman, ahead of Whitting, a Lieutenant, in his order of merit. Being deceased, Sheean was only eligible for two awards, the MID and the VC. The Tribunal paid particular attention to Richards's order of merit, and could find no evidence to suggest why, on merits, the order was amended by the ACNB.

Treatment of survivors

- 17-126 In his oral submission to the Tribunal on 14 December 2011, Mr Stanley Yates stated that upon their arrival in Darwin, the survivors were treated 'outrageously' by authorities in Darwin. This view was supported by Dr Leonard, a survivor from the whaler, who, in his submission of the same day, stated that when *Kalgoorlie* arrived at the wharf, Pope and other senior naval officers met them with 'formality, distance, coldness and even an implied threat'. Dr Leonard recalled that Pope said that 'none of you must say a word about the sinking of *Armidale* to anyone'. Dr Leonard said he was left with the impression that Pope thought the survivors had failed in losing their ship, and he felt that this was a factor in Richards not getting another command.
- 17-127 Dr Leonard said that from this point, after the survivors were admitted to hospital for a few days, the surviving members of the ship's company were sent their separate ways, some overland in trucks, others returning to eastern Australia via sea with no opportunity to talk, because they were forbidden from doing so.
- 17-128 The Tribunal saw no evidence that, despite their treatment, there was any deliberate attempt by Pope to blame the *Armidale* ship's company for the loss. The Tribunal noted that in official correspondence Pope agreed with the findings of the BOI in that Richards 'took all proper steps for the safety and fighting of his ship'.⁹⁴ As discussed below (paragraph 17-129), an official publicity ban was by then in place regarding the loss of the *Armidale*, and the Tribunal concluded that it was this ban that resulted in Pope's direction to the survivors.

The Navy wanted to cover up the whole matter

- 17-129 A number of submitters asserted that another document existed that went beyond the ROP, and which had been 'covered up', and was highly secret. This document was most likely the BOI Report, and the ACNB consideration of that report that followed. These documents were at the time classified as Secret or Most Secret. As this was a time of war, the reports contained ship and troop movements as well as the reporting of enemy activity. From an intelligence-gathering perspective, the Allies would not have wanted that information to fall into the hands of the enemy, which was a likely reason behind the media ban that was in force until 24 December. The documents have now been digitised by the National Archives of Australia and are available for the public to view.⁹⁵

⁹⁴ Minute NT0156/17, NAA: MP1185/8, 2026/9/336.

⁹⁵ See 'Naval Operations - Report by Naval Board on loss of HMAS *Armidale* 4/12/42 - 12/1/43 NAA: A5954, 518/18 and Loss of *Armidale*', NAA: MP1185/8, 2026/9/336.

The eyewitness statements about Sheean's valour now available are sufficient to satisfy the award of the Victoria Cross

- 17-130 The evidence of Sheean's act of gallantry comes from the report of Richards and survivors of *Armidale*. However, many of those who have been quoted in submissions to the Tribunal did not actually witness the act. As *Armidale* listed heavily to port, only those survivors in the water on the port side of the sinking ship would have been in a position to observe Sheean's actions. Those who abandoned ship on the starboard side could not have seen Sheean. There is no doubt that Sheean's actions were observed by some, and also discussed by the survivors during the long period at sea before being rescued.
- 17-131 Efforts have been made over time to record witness statements. Many of these were taken by Frank Walker during the 1980s. The recordings of these are somewhat difficult to use as evidence, since the witnesses were not identified individually and in some cases there were group discussions. During the course of this Inquiry, the Tribunal was provided with many statements and declarations by survivors of *Armidale*. These came via statements attached to submissions, recordings of interviews conducted over time, and interviews conducted by the Tribunal's support staff over the course of this Inquiry. The Tribunal also heard from one witness, Dr Ray Leonard, during a public hearing in Melbourne.
- 17-132 In his interview and at the hearing in Melbourne on 14 December 2011, Dr Leonard perhaps provided the most precise record as a witness — his action station was on the bridge. He left the ship over the starboard side after the order to abandon ship. He reported that once in the water he heard an Oerlikon still firing. He said that he knew it was not the port or starboard weapon so it could only be the aft weapon (Sheean's gun). After the attackers had withdrawn, Leonard encountered Russell Caro, someone who Leonard described as a man of honour and integrity, and others who were quick to describe the actions of Sheean. Dr Leonard said that this occurred while the survivors were still in the water and that due to the short time involved (a minute or so after the ship had sunk) there was no opportunity for rehearsal.
- 17-133 A summary of what the witnesses saw, and how the Tribunal received the statements are summarised in Table 17-2.
- 17-134 Some of the survivors in the water claimed to have seen Sheean firing the weapon from beneath the surface.
- 17-135 On 20 August 2012 two members of the Tribunal visited HMAS *Castlemaine*, (a corvette similar to *Armidale*) now maintained as a floating museum by the Maritime Trust of Australia at Gem Pier, Williamstown, Victoria.⁹⁶ The Tribunal members were given an overall familiarisation of the vessel and its layout, concentrating specifically on the 20 mm Oerlikon AA gun maintained by the trust aboard *Castlemaine*. This gun is the same type that was mounted to the aft firing position of *Armidale*. As well as being given a demonstration of the operation of this weapon, the members were also provided with technical documentation on

⁹⁶ Royal Australian Navy, 'HMAS *Castlemaine*', Royal Australian Navy, 117.55.225.121/HMAS_Castlemaine, viewed 7 September 2012.

the Oerlikon by the trust. The Tribunal is grateful to the trust for their assistance with the inquiry.

Table 17-2 Witness statements — HMAS *Armidale*

Name of survivor	Where situated at the time of the sinking	What was witnessed	Where & when reported
Stoker Ray Raymond	On the port side in the water, from the engine room, 35–40 yards from <i>Armidale</i>	Oerlikon manned by Sheean; shooting down of one Japanese aircraft and damage to possibly two others	Statement attached to Submission 128; interviewed by Frank Walker in the 1980s
Able Seaman Edward 'Ted' Pellet	In the vicinity of the motor boat on the deck of <i>Armidale</i> , and later in the water	With Sheean on the deck as Pellet used an axe to release the motor boat; saw Sheean injured as he headed back to the gun; from the motor boat in the water observed Sheean firing the gun	Statement attached to Submission 128; interviewed by Frank Walker in the 1980s
Leading Signalman Arthur Lansbury	After piping 'abandon ship' throughout the ship he escaped to water on the port side of the ship	While going around the ship saw Sheean go back to the Oerlikon, strap himself in; saw him 'hit in the back'	Statement attached to Submission 128; interviewed by Frank Walker in the 1980s
Wireman William 'Bill' Noel Lamshed	Blown over port side from depth charge setting position; 'a few hundred yards away'	Saw the aft Oerlikon start to fire; witnessed tracer hitting a Zero, which ditched into the sea. Later learned it was Sheean firing the gun	Statement attached to Submission 128; supplementary written account taken on 1 June 2002; interviewed by Tribunal Secretariat on 2 September 2011
Ordinary Seaman Russell 'Russ' Caro	Port side in the water	This is not entirely clear. Caro certainly related Sheean's actions story to many immediately afterwards	Wrote statement; wrote an article for the <i>Australian Journal</i> published on 2 June 1945
Ordinary Seaman Ray Leonard	Starboard side in the water	Heard the distinctive sound of the Oerlikon firing; knew the forward Oerlikons had been abandoned	Submission 94; Statement attached to Submission 128; interviewed by Tribunal Secretariat on 30 August 2011 Oral Submission — Public Hearing Melbourne, 14 December 2011

Table 17-2 Witness statements—HMAS *Armidale* (continued)

Name of survivor	Where situated at the time of the sinking	What was witnessed	Where & when reported
Ordinary Seaman Donald Rex Pullen	In the water on the starboard side of ship	Did not witness Sheean, but heard about it from other survivors	Statement attached to Submission 128; Interviewed on 18 November 2005
Ordinary Seaman Colin Madigan	Not clear	Heard Oerlikon gun firing	Statutory declaration attached to Submission 128
Able Seaman Jack Duckworth	Washed off the stern, probably on the starboard side	What Duckworth witnessed is not clear, but he stated in the interview 'As she went down, Ted Sheean kept one of his guns firing, and went down with the ship. He got a row of machine gun bullets right across the chest, but went back to his gun, strapped himself in and kept firing as she went below the water. He brought down a fighter'	1945 interview by Peter Hemery — attachment to Submission 236

- 17-136 The Tribunal reviewed the operating manuals and drawings of the gun.⁹⁷ In its research, the Tribunal observed that the gun cycle is operated by gas blowback. As each round fires, gas pressure from the explosion blows the breech block backward from the chamber, ejecting the expended cartridge case during its travel. At full recoil, it is either stopped by the trigger hook or it continues its cycle by collecting a new round from the magazine and returning it to the chamber to fire; and so the cycle continues until the trigger is released. This cycle will not operate automatically if the breech block is submerged, due to the combined effect of water resistance slowing the breech block travel, and the significant reduction in the available pressure delivered by the gas.
- 17-137 There is no question that Sheean was firing as *Armidale* was sinking, but, as mentioned above, the mechanical nature of the Oerlikon would not sustain an ability to fire from under water. Observers, viewing the action from the surface of the water, could have been misled into believing that the Oerlikon was firing by the effect of the strafing from enemy aircraft, which continued after *Armidale* had sunk.

⁹⁷ Ordnance Pamphlet no. 911, 20 mm Anti-Aircraft Gun, 943, at www.forgottenweapons.com/wp-content/uploads/manuals/oerlikon_manual.pdf, viewed 18 September 2012. Drawings provided by the Maritime Trust of Australia Inc. [Submission 261].

- 17-138 Despite this discrepancy, the Tribunal found that there was evidence in Richards's ROP, corroborated by the accounts of survivors including Raymond, Pellet, Lansbury and Lamshed, to find that:
- after assisting Pellet in releasing the motor boat, instead of obeying the order to abandon ship, Sheean, a loader of *Armidale's* aft Oerlikon, proceeded to this weapon to single-handedly engage the enemy;
 - around this time, Sheean was wounded by the attacking Japanese aircraft;
 - Sheean then strapped himself to the after Oerlikon, and used this weapon to shoot down at least one Japanese aircraft; and
 - Sheean remained at his weapon until he was killed.
- 17-139 The Tribunal also concluded that from the accounts of survivors, that information they provided did not amount to any new evidence about Sheean's actions at the time of the sinking of HMAS *Armidale*.

Arguments against an award

- 17-140 Comment should be made on the arguments in the submissions against the award of the VC to Sheean (see paragraph 17-90 above).
- With regard to the claim that if the administrative arrangements were inappropriate all other awards would need to be reassessed, the Tribunal found that the process was in accordance with the rules and practices of the day.
 - With regard to the argument that the majority of claims about Sheean after his death are inaccurate at best and in many cases 'preposterous', the Tribunal found that some were indeed inaccurate (the Oerlikon firing from under water was one) but that there were sufficient reliable witness statements to verify what actually happened.
 - With regard to the claim that Lieutenant Whitting was every bit as instrumental as Sheean in saving the lives of the men, but received the same decoration as Sheean, the Tribunal noted that Richards deliberately placed Sheean ahead of Whitting in his order of merit.

Tribunal conclusion

- 17-141 In determining whether it should now recommend Sheean for the VC for Australia the Tribunal needed to take into account a number of considerations, including the following:
- a. The process by which Sheean was recommended for a decoration and subsequent award of an MID was in accordance with the existing rules and practices.
 - b. While the ACNB's report to the Prime Minister might be seen as deficient, there was no evidence that this was done as a 'cover-up', or that it influenced the honours and awards process. The process that was applied was the same as that applied for recommendations for other ships. The ACNB did not intervene in any other cases.

- c. Notwithstanding the deficient statement in the ROP, there is sufficient evidence to establish that what Sheean did was extremely brave. Instead of abandoning ship he returned to the Oerlikon, engaged the enemy, shot down at least one enemy aircraft, and remained at his weapon until he was killed. At some earlier stage he was wounded.
- d. Any recommendation by the Tribunal must take into account the need to maintain the integrity of the Australian honours and awards system. In this case, recommendations to grant retrospective honours need to be based on:
 - a clear case of maladministration leading to a manifest injustice;
 - if there was a clear case of manifest injustice, the level of honour recommended must be so compelling as to leave no doubt that it would have been awarded if the maladministration had not been present;
 - the rules applying at the time must be applied, (i.e. the only posthumous decorations that could be awarded were the VC and the MID. The Tribunal would need to take into account the nature of the honour that was likely to have been awarded at the time); and
 - maladministration or compelling new evidence even though it does not of itself justify recommending an Australian honour to recognise the service or actions not adequately considered at the time.

17-142 With these considerations in mind, the Tribunal concluded that there was not sufficient evidence to find that there was a manifest injustice with regard to the outcome of the recommendation concerning Sheean. The Tribunal was also satisfied that there was no new evidence to support the reconsideration of Sheean for a VC for Australia.

17-143 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.

Tribunal recommendation

17-144 The Tribunal recommends that no action be taken to award Ordinary Seaman Sheean a Victoria Cross for Australia or other further form of recognition for his gallantry or valour.

17-145 The Tribunal also recommends that the RAN perpetuate the use of *Sheean* as the name of a major combatant vessel.

CHAPTER EIGHTEEN

LEADING AIRCREWMAN NOEL ERVIN SHIPP

18-1 Leading Aircrewman (LACM) Noel Ervin Shipp was born in Brisbane on 24 December 1944 and joined the RAN on 10 January 1963 as an Underwater Control rating. Shipp transferred to the Aircrewman category in July 1967 and was posted to the RAN Helicopter Flight Vietnam (RANHFV) in September of the following year. Shipp served with the unit until his death in combat in a helicopter crash on 31 May 1969. His duties as a helicopter crewman were to be door gunner and to assist with the helicopter load. The action that led to his death is the subject of this review.



Leading Aircrewman Noel Ervin Shipp, March 1969
(Photograph courtesy Commander Max Speedy, RANR)

Recognition for service

- 18-2 For his service, LACM Shipp was entitled to the following awards:
- Australian Active Service Medal (AASM) 1945–1975 with Clasp 'VIETNAM'
 - Vietnam Medal
 - Australian Service Medal 1945–1975 with Clasp 'PNG'
 - Australian Defence Medal
 - US Air Medal
 - Republic of Vietnam Campaign Medal.

What has led to the review?

18-3 While the Shipp family support the nomination of LACM Shipp for the Victoria Cross (VC), they have not previously sought review. LACM Shipp was formally nominated for review in the Terms of Reference, after being proposed by the Chief of the Defence Force in a ministerial submission to the government.¹ Defence did not provide any material to the Tribunal to suggest that LACM Shipp's recognition was inadequate and was not able to provide any of the submissions that it claimed had led to his name being included in the Terms of Reference.

Submissions

18-4 The Tribunal did not receive any public submissions on behalf of Shipp for the award of the VC, with the exception of Noel Shipp's widow, Mrs Gloria O'Flaherty, who was invited to provide a written submission after she attended the public hearing in Sydney. The Tribunal received 13 written submissions and heard 8 oral submissions regarding LACM Shipp.

¹ 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.

Written submissions

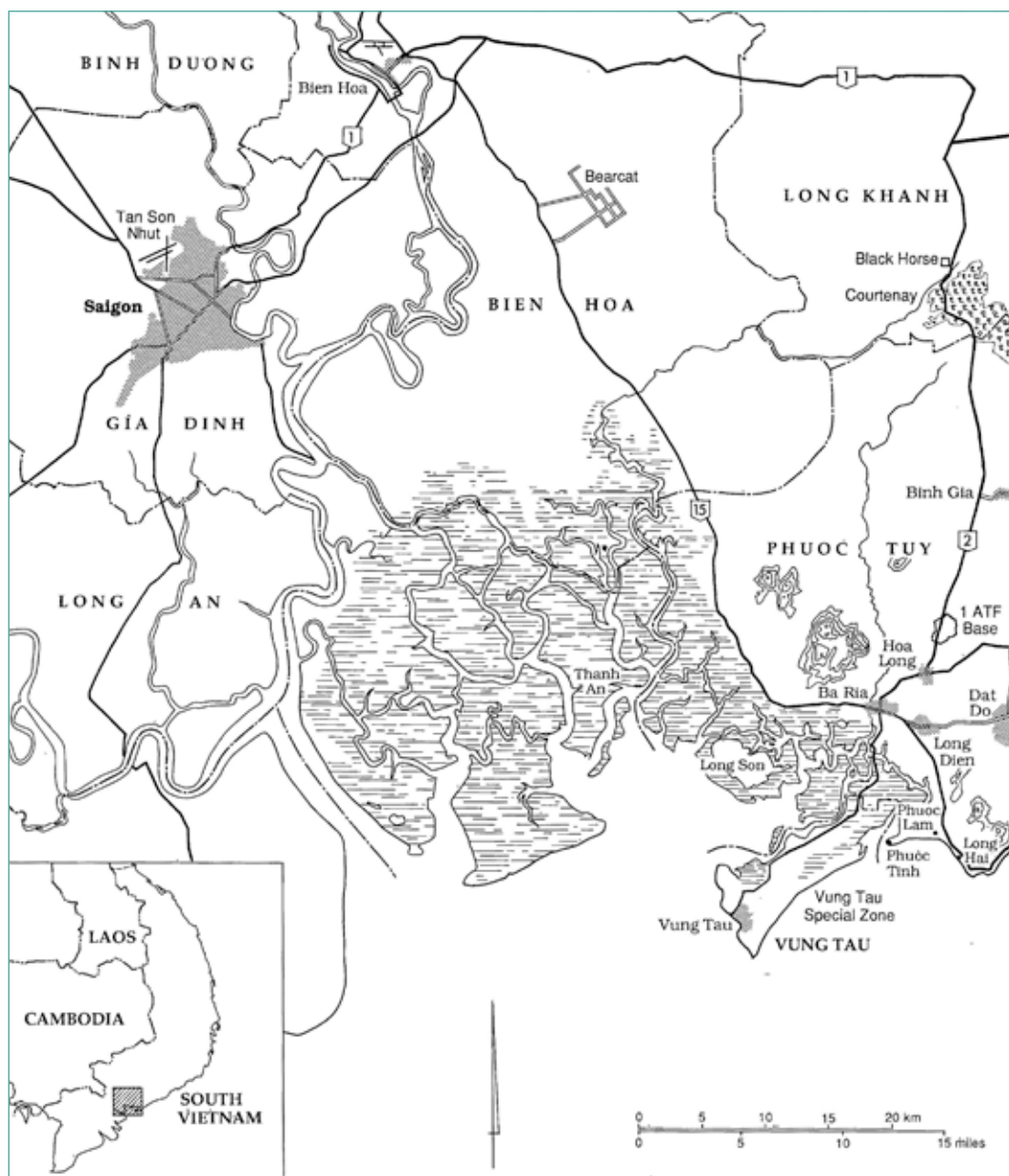
- a. Submission 35 — Commodore Geoff Ledger, RAN (Retd), National President of the Fleet Air Arm Association of Australia (against)
- b. Submission 35A — Rear Admiral Neil Ralph, RAN (Retd) (against)
- c. Submission 47 — Commander Ed Bell, RAN (Retd) (against)
- d. Submission 99 — Mr Graham Wilson (against)
- e. Submission 123 — Mr Peter Cooke-Russell, National Vice President, The Naval Association of Australia (non-committal)
- f. Submission 124 — Mr Richard Pelvin (against)
- g. Submission 145 — Commander Max Speedy, RANR (for another award — unspecified)
- h. Submission 187 — Lieutenant Colonel Walker L Knight Jr, USAR (Retd) (information)
- i. Submission 188 — Mr Dick Markwell (statement on RAN awards policy at the time)
- j. Submission 189 — Mr Michael Guard (for some award — unspecified)
- k. Submission 250 — Mrs Gloria O’Flaherty (for)
- l. Written statement tendered at hearing by Captain Robert Ray, RAN (Retd) (against)
- m. Written statement tendered prior to interview by Mr Bob Anders (for).

Oral submissions

- a. Mr Graham Wilson — Public Hearing Canberra — 1 December 2011 (against)
- b. Mr Richard Pelvin — Public Hearing Canberra — 2 December 2011 (against)
- c. Mr Peter Cooke-Russell representing the Naval Association of Australia — Public Hearing Canberra — 2 December 2011 (against)
- d. Rear Admiral Neil Ralph, RAN (Retd), Captain Robert Ray, RAN (Retd), and Mr J Martin representing the Fleet Air Arm Association of Australia — Public Hearing Canberra — 2 December 2011 (against)
- e. Commander Max Speedy, RANR — Public Hearing Melbourne — 15 December 2011 (for Posthumous Mention in Despatches (MID) or equivalent)
- f. Commodore David Farthing, RAN (Retd) — Public Hearing Sydney — 8 February 2012 (against)
- g. Lieutenant Commander Graham Rohrsheim, RAN (Retd) — Public Hearing Adelaide — 14 February 2012 (against)
- h. Commander Winston James, RAN (Retd) — Public Hearing Perth — 15 February 2012 (against).

Background

18-5 In July 1967, in response to a request for assistance from the US, the government announced that a detachment of RAN Fleet Air Arm personnel would join a US Army aviation company to provide airborne support for Allied forces operating in South Vietnam. This new flight, known as the RANHFV, was integrated with the US Army 135th Assault Helicopter Company (AHC) flying helicopters in both utility and gunship configurations. As it consisted of US and Australian servicemen, the unit became known as an 'Experimental Military Unit' (EMU). At the commencement of Shipp's tour in September 1968, the EMU was located at Camp Blackhorse, 58 km east of Saigon. Two months later it relocated to Camp Martin Cox (Bearcat), 32 km north-east of Saigon. The location is shown on Map 5.



Source: Chris Coulthard-Clark, *The RAAF in Vietnam: Australian air involvement in the Vietnam War 1962–1975*, Allen & Unwin, St Leonards, 1995, p. 36.

Map 5 Saigon and environs

18-6 US helicopter assault companies comprised several platoons of aircraft, each equipped with UH-1 'Huey' aircraft including UH-1D troop carriers and a platoon of UH-1C gunships. There was also a service platoon, with one UH-1D maintenance aircraft, and a headquarters platoon.² Noel Shipp was assigned to the helicopter gunship platoon known colloquially as the 'Taipans'.³

18-7 The US Army UH-1C gunships were well armed. The usual weapons configuration consisted of two forward firing mini-guns, two seven-shot rocket pods fixed beside the skids and an M60 machine gun firing out the side doors — one per side. The configuration is shown in the photos.

18-8 AHCs generally flew three types of mission: troop lift, combat assault and general support. During troop insertions, gunships generally left before the troop carriers and proceeded to the area of operations where they joined the command and control aircraft and the flight commander. While the numbers varied from time to time, gunships usually operated in light fire teams of two aircraft, with a third as a backup. The three would rotate on and off post so that, in theory, there were two gunships present and available at all times. In practice, there were often insufficient aircraft available. The gunships stood off ready to fire if required, while the troop carriers arrived in waves to insert the troops. Troop extraction worked in much the same way. When the landing zone was 'hot' and the insertion or extraction was opposed, combat assault involved close air support on the part of the gunships, which gave suppressive fire.⁴ A 135th helicopter gunship crew consisted of an aircraft commander, a copilot, a crew chief (who was also a door-gunner on missions) and a door gunner. Crew chiefs were responsible for 'the general care of the aircraft and to keep it mission ready each day. Gunners were responsible for arming and maintenance of the weaponry used'.⁵



A UH-1C helicopter gunship of the 135th AHC, showing the position of the rocket pods and miniguns
(Photograph courtesy of the Australian War Memorial)



LACM Noel Shipp flying as a door-gunner aboard a UH-1C of the 135th
(Photograph courtesy of the Australian War Memorial)

2 Jeffrey Grey, *Up top: the Royal Australian Navy and Southeast Asian conflicts 1955–1972*, Allen & Unwin, St Leonards, 1998, p. 242.

3 Mr Michael Guard, former US Army Crew Chief with the 'Taipans', Submission 189.

4 Grey, *Up top*, p. 249.

5 Mr Michael Guard, Submission 189.

- 18-9 The first RANHFV contingent became fully operational on 3 November 1967. The second RAN contingent (which included Shipp) arrived in Vietnam on 9 September 1968 and was led by Lieutenant Commander Graham Rohrsheim, RAN. For the majority of its time in country, the second contingent operated out of Camp Martin Cox (Bearcat). This tour ended in October 1969.
- 18-10 During its tenure of almost four years, over 200 Fleet Air Arm personnel rotated through the RANHFV in four contingents of approximately one year. Five RAN personnel died while serving with the RANHFV and 22 were wounded in action.⁶ 1968 and 1969 were heavy years in operational terms. Over those two years, the 135th flew almost 178,000 sorties and aircraft were damaged 354 times. There were also 18 (Australian and US) members killed in action, a further 4 killed in accidents and numerous more wounded.⁷
- 18-11 Shipp soon found himself flying as a helicopter door gunner with the 'Taipans'. In this role, he flew numerous missions, providing suppression fire for troop lift helicopters; he also participated in frequent ground assaults on enemy positions and troop concentrations.

Description of the action

- 18-12 On 31 May 1969, aircraft of the 135th were extracting elements of the 7th Army of the Republic of Vietnam (ARVN) Infantry Division from a pickup zone in Dinh Tuong Province when they came under intense ground fire from the enemy armed with automatic weapons. The Duty Officer's journal records the location as 16 km west of My Tho, and the time of the action as 0930 local.⁸ Three aircraft were damaged and one pilot was injured, necessitating his immediate medical evacuation.
- 18-13 Two gunships, one of which carried Shipp as the door gunner, were then directed to the source of ground fire and commenced attacking runs with rockets and machine guns. Shipp's aircraft commander, Captain Dennis 'Mike' Phillips (US Army), was cleared to engage two of the enemy that he had reported. Following this transmission, the aircraft was seen to crash and burst into flames. The copilot, Warrant Officer Steven Martin (US Army), crawled from the wreckage and was extracted, but died in Long Binh hospital later that day.⁹ Shipp and the other occupant of the helicopter, Specialist 4 Byron Bowden (US Army), were most likely killed on impact.¹⁰ Ground forces later returned to secure the area until these bodies were recovered and salvage operations completed.
- 18-14 The wing lead gunship, commanded by Chief Warrant Officer 2 Robert Anders (US Army), attempted to provide fire support at the time of the crash but there was little anyone could do.¹¹ Anders was later to report that, with complete disregard for his own safety, Leading Aircrewman Shipp hung half outside his

6 John Perryman & Brett Mitchell, *Australia's Navy in Vietnam: Royal Australian Navy operations 1965-72*, Topmill, Silverwater, NSW, 2007, p. 54.

7 Grey, *Up top*, pp. 247-255.

8 US Form AR 220-346, MACV Duty Officer's Log, 31 May 1969, Item no. 37. File: MACJ3-08 Daily Journals RG-472 Entry 155 270/76/29/6 Boxes 29-30 National Archive and Records Administration, Washington, DC.

9 RANHFV Record of Proceedings — May 1969, NAA: AWM 78, 389/1.

10 Defence Honours and Awards Appeals Tribunal interview with Mr Robert Anders, 15 November 2011, transcript pp. 9-11.

11 Perryman & Mitchell, *Australia's Navy in Vietnam*, p. 46.

aircraft, exposing himself to rocket back-blast and intense enemy fire in order to bring more effective fire to bear on the target.¹² Bowden, the other gunner, is cited as having also exposed himself to intense fire while working his own weapon.¹³ At this point in the action, Shipp's pilot was hit and the gunship rapidly lost altitude before crashing and exploding in the terrain below. In his oral submission, Shipp's flight commander, Lieutenant Commander Rohrsheim, stated that hanging out of the helicopter to aim fire was RANHFV standard procedure.¹⁴



Noel Shipp and the crew of Taipan 720, date unknown. From left, Warrant Officer Steven Martin, Specialist 4 Byron Bowden, Captain Dennis Phillips, LACM Noel Shipp

(Photograph courtesy of Commander Max Speedy, RANR)

- 18-15 Former 'Taipan' crew chief Michael Guard stated in his submission to the Tribunal that he 'could state unequivocally that the crew [of Shipp's aircraft] knew what was about to happen moments prior to impact' and that: 'Noel [Shipp] likely had no thought of perishing in that crash, he continued to fire even as any hope to minimize (sic) injury to himself diminished, he continued to fire to save what was left of his crew'.¹⁵

Eyewitnesses accounts of Shipp's action

- 18-16 CW2 Anders provided a signed witness statement of the event some time prior to 14 June 1969. Others on the scene either perished in the crash or did not provide witness statements. In a telephone interview with the Defence Honours and Awards Appeals Tribunal Secretariat on 15 November 2011, Mr Anders recalled that Shipp was not scheduled to fly on that day, but had volunteered to take the place of another member of the unit who was not available to go. He further stated that Shipp would have known of his fate approximately one to two minutes beforehand, yet in spite of this he continued to fire his weapon. Mr Anders was of the opinion that the actions of Phillips, Martin, Shipp and Bowden saved the lives of 'hundreds' of ARVN troops who were on the ground at the time.¹⁶ Mr Anders also reported in this interview that on two occasions while the gunship was undertaking attacking runs, Shipp further exposed himself to danger by hanging out of the aircraft's cabin in order to correct jams in the mini-gun feed mechanism.¹⁷ Again, this was standard practice.

¹² Recommendation for the US Silver Star, CNS Working File VN USN Recommendations — Held at the Directorate of Honours and Awards.

¹³ Perryman & Mitchell, *Australia's Navy in Vietnam*, p 46; and Steve Eather, *Get the bloody job done*, Allen & Unwin, St Leonards, 1998, pp. 68–69.

¹⁴ Oral submission from Lieutenant Commander G Rohrsheim, RAN (Retd), Public Hearing Adelaide, 14 February 2012.

¹⁵ Mr Michael Guard, Submission 189.

¹⁶ Anders interview.

¹⁷ *ibid.*

- 18-17 The Tribunal noted that Mr Anders currently recalls the incident taking place late in the afternoon of 31 May, while the RANHFV Record of Proceedings and folios on Shipp's personnel file indicate the incident took place at 0930. Other entries on the flight's Report of Proceedings indicate that local time was used to record events and not Zulu time (more commonly known as Greenwich Mean Time and frequently used in military reports), which might have otherwise resolved the discrepancy.

Chain of command for honours and awards

- 18-18 The RANHFV reported through both the Australian and the US chains of command, depending upon the nature of the report. For the US chain, the Commanding Officer of the 135th AHC (then Major Harry Woodmansee) reported to the Aviation Battalion Headquarters (HQ) then to the Aviation Brigade HQ. If an award was of sufficient status, recommendations were further referred to the HQ US Army Vietnam and then to US Military Assistance Command, Vietnam, for final consideration.¹⁸
- 18-19 However, for Australian nominated honours, the recommendations were drafted by the RAN Flight Commander (sometimes after consultation with his American Commanding Officer (CO)). The recommendation was then forwarded through the Commander Australian Force Vietnam (COMAFV), via the Naval Staff Officer, and on to the Chief of Naval Staff in Canberra for consideration. Recommendations that progressed beyond this stage were considered by the Minister for Defence and, finally, the Governor-General.¹⁹ In the RAN case, it was policy that no immediate awards would be granted and that an operational scale (a quota) would apply (see paragraphs 18-21 and 18-22 for further explanation).²⁰ Verbal guidance regarding the management of honours and awards was given to the Commander of the first Flight, Lieutenant Commander Ralph, who recalled, 'we had to ignore American nominations for awards' and 'all instructions were oral, including the briefing before I left [Australia] and again in Saigon ... they never put pen to paper'.²¹
- 18-20 US recommendations for Australians went through US channels and, when approved, back to COMAFV. At the time of Shipp's action, the brigade-level honours and awards policy was that all members of an aircraft crew who had distinguished themselves had to be submitted for valour awards, not just individuals.²² However, it was also RAN policy at the time not to accept certain US awards.²³ For this reason, once a US recommendation was received at COMAFV,

18 Grey, *Up top.*, p. 243.

19 NAA: A1813, 38/202/36; held in RANHFV Box File, RAN Sea Power Centre – Australia.

20 Oral submissions by Rear Admiral Ralph (Canberra, 2 December 11), Commodore Farthing, RAN (Retd) (Sydney, 8 February 2012), Commander James, RAN (Retd) (Perth, 15 February 2012), Lieutenant Commander Rohrsheim, RAN (Retd) (Adelaide, 14 February 2012) and Commander Speedy, RANR (Melbourne, 15 December 2011).

21 Oral submission, Public Hearing Canberra, 2 December 2011 and Submission 35A: Rear Admiral Neil Ralph, RAN (Retd), 1st RANHFV Officer in Charge.

22 Lieutenant Colonel Walker Knight, Submission 187; Knight was Assistant Adjutant for the 222nd Aviation Battalion (a superior unit to the 135th in the 1 Aviation Brigade structure).

23 Oral submission by Rear Admiral Neil Ralph, RAN (Retd), on behalf of the Fleet Air Arm Association, Public Hearing Canberra, 2 December 2011; oral submission by Commander Max Speedy, RAN (Retd), Public Hearing Melbourne, 15 December 2011 and Submission 145; Eather, *Get the bloody job done*, p. 141.

an assessment would be made as to eligibility for an imperial award. In June 1999, the Australian Government finally approved the wearing of certain foreign honours and awards although Defence always maintains the AASM 1945–1975 with Clasp ‘VIETNAM’ is the pre-eminent award recognising service in Vietnam, including Australians serving with American units.²⁴

The operational scale of awards (quotas)

18-21 An ‘operational scale’ of awards (also known as a quota) for Vietnam was first raised in 1965, with the intention to control the allocation of awards for gallant and distinguished service including MIDs. The scale laid down the maximum number of awards that could be granted in a given period and was based on the total number of personnel in theatre, and for airmen, on the total number of combat hours flown. By the time of Shipp’s action, the scale had been in place for some time and was set per service and per six-month review period. This is shown in Table 18-1.²⁵

Table 18-1 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 and Army helicopter crews	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

18-22 The RANHFV members stated that they also had a further ration of half the quota placed upon them as, unlike the RAAF and Australian Army, RAN pilots flew with US pilots so generated half the required total in flying hours accrued. According to Speedy and Ray, the RAN aircrew had to fly 2,400 hours before any award could be considered.²⁶

18-23 For many potential RANHFV award recipients, there was a further restriction as a result of the order for carryover from one period to another. The order was quite specific:

In the case of periodic (Queen’s Birthday and New Year’s honours) awards, the unused part of an allocation for one period is not carried forward to be added to the next. In the case of operational awards, there would be no justification

²⁴ CPD, H of R, 21 June 1999, pp. 5477–5479.

²⁵ Department of Defence, Submission 235, Attachment 1.1, p. 11.

²⁶ Max Speedy & Bob Ray (eds), *A bloody job well done: the history of the Royal Australian Navy Helicopter Flight Vietnam 1967–1971*, Kookaburra Books, Woollahra, 2011, p. 424.

for carrying forward the whole or part of an entitlement to awards to be used in a succeeding period if the personnel who earned the entitlement in the first period were not serving in the operational area during the following period.²⁷

18-24 The RAN awards statistics for the period January–June 1969 show an entitlement to two decorations and three MIDs, but despite the above order, four decorations and three MIDs were actually awarded. A note to file explains that two decorations were in fact previous carryovers and that no awards were made for the following six-month period.

18-25 In the view of the RAN Flight Commander of the third contingent, Lieutenant Commander Farthing, it was considered that to 31 December 1969, his men had an insufficient period of service to qualify for awards and that there were no instances of individual gallantry sufficient to justify an award.²⁸ Farthing also mentions that this practice was observed with respect to the previous flight, which the Tribunal confirmed was correct. All second contingent awards were included in the 1 January to 30 June 1969 quota.

Did the RANHFV miss out on awards?

18-26 Despite apparent inequity, the operational scale was the system under which awards to the RANHFV were granted. The scale applied across the RAN, so RANHFV award recommendations for periodic awards had to be considered together with those for other RAN units. Overall, the RANHFV did extremely well in terms of total RAN awards. The RANHFV, RAN (all the HMA Ships and Clearance Diving Team 3) and total awards are shown in Table 18-2.

Table 18-2 Comparison of the RANHFV with other RAN awards

Award	RANHFV	Other RAN	Total RAN
MBE	3	1	4
DSC	8	1	9
DFC	5	1	6
DSM	0	4	4
BEM	1	3	4
MID	25	23	48
Total awards	42	33	75

BEM = British Empire Medal, DFC = Distinguished Flying Cross, DSC = Distinguished Service Cross, DSM = Distinguished Service Medal, MBE = Member of the Order of the British Empire, MID = Mention in Despatches

Source: Grey, *Up top.*, Appendix B. The table only lists equivalent awards.

27 'Awards for RANHFV Aircrew Personnel, 9 August 1971', NAA: A1813 T19, 38/202/26; held in RANHFV box file, RAN Sea Power Centre – Australia.

28 Minute, 'Commanding Officer, RANHFV, 5 February 1970', NAA: A1813 T19, 38/202/26; held in RANHFV box file, RAN Sea Power Centre – Australia.

- 18-27 The Tribunal next considered a comparison of awards between the RANHFV and the RAAF and RAN members serving with No. 9 Squadron, who also operated UH-1 helicopters during the Vietnam War. The RAAF members also had a number of restrictions for awards under the operational scale. Table 18-3 lists the awards.

Table 18-3 Comparison of awards to the RANHFV versus the RAAF No. 9 Squadron

AWARD	RANHFV	No. 9 SQN RAAF
MBE	3	2
DSC/DFC	13	26
DSM/DFM	0	9
BEM	1	3
MID	25	34
Total awards	42	74

BEM = British Empire Medal, DFC = Distinguished Flying Cross, DSC = Distinguished Service Cross, DSM = Distinguished Service Medal, MBE = Member of the Order of the British Empire, MID = Mention in Despatches, RAAF = Royal Australian Air Force, RANHFV = the Royal Australian Navy Helicopter Flight Vietnam.

Source: Grey, *Up top.*, Appendix B; 9 Squadron RAAF, Australian War Memorial, www.awm.gov.au/units/unit_11035vietnam.asp viewed 23 July 2012. The AWM website lists the No. 9 Squadron Awards.

For the Second Contingent (Shipp's), the RANHFV had 14 officers and 37 ratings whereas No. 9 Squadron had 40 officers and 131 other ranks.²⁹ While statistics can be misleading and the figures are total awards for the Vietnam War, the raw figures indicate that at least on a pro-rata basis, again, the RANHFV did extremely well.

United States awards for this action

- 18-28 Shipp was awarded the US Air Medal on 20 November 1968 for air action after he had completed the required number of sorties.³⁰ The medal is awarded to 'any person who, while serving in any capacity in or with the Armed Forces of the US, has distinguished themselves by meritorious achievement while participating in aerial flight'.³¹ The requirement was for the candidate to have flown 25 hours in combat. In the case of Shipp, he accrued his required 25 hours very quickly — between 12 and 17 September 1968. Shipp's US Air Medal Citation reads:

By the direction of the President, the Air Medal is presented to LACM Noel E. Shipp R59629 Royal Australian Navy who distinguished himself by meritorious achievement while participating in sustained aerial flight, in support of combat ground forces in the Republic of Vietnam. During the period 12 September 1968 to 17 September 1968 he actively participated in more than twenty-five aerial missions over hostile territory in support of operations against communist aggression. During all these flights, he displayed the highest order of air discipline and acted in accordance with the best traditions of

29 RAN Helicopter Flight Vietnam, Royal Australian Navy, www.navy.gov.au/RAN_Helicopter_Flight_Vietnam, viewed 23 July 2012; 'Figures for June 1969, Nominal roles and details of operations No. 9 Squadron Vietnam 1969-1970', NAA: A10779, 4.

30 Mrs Gloria O'Flaherty, Submission 250. Air Medal Citation and Certificate.

31 *ibid.*

the service. By his determination to accomplish his mission, in spite of the hazards inherent in repeated aerial flights over hostile territory, and by his outstanding degree of professionalism and devotion to duty, he has brought credit upon himself, his organisation, and the United States Army.

The citation is standard wording for all in the US Army who receive the Air Medal.

- 18-29 Shipp did not receive an award for his service on 31 May 1969. However, he was considered by the US chain of command for the award of the US Silver Star. The US Silver Star is the third highest military award for gallantry in the US system. CW2 Anders provided a signed statement in support of this award at the time, but the Star was not awarded because 'it is felt, after critical review, that the criteria for the award of the Silver Star ... have not been met'.³² The recommendation was then downgraded by US authorities to a Distinguished Flying Cross (DFC), but after it had been forwarded to Australian authorities, no award was made.
- 18-30 The Tribunal was able to track the paper trail of the recommendation. Shipp's CO, Major Woodmansee, progressed it through the chain of command to the 1st Aviation Brigade where it was downgraded to a recommendation for a US DFC. From there it was sent to the Commanding General, US Army Vietnam and on to Chief, Free World Military Assistance Office (US Military Assistance Command, Vietnam). On 16 July, a copy was sent from the Chief, Free World Military Assistance Office to COMAFV, two days after the return for periodic Australian awards for the January to June 1969 period had been submitted. On 7 August 1969, Shipp's US DFC recommendation was forwarded from COMAFV to the Naval Board 'for information'. The paper trail appears to have followed the correct procedure as it went to COMAFV for consideration for a possible imperial award. Unfortunately, the timing was not good for Shipp. The quota for that period had been used up and his name was not included in the next RANHFV periodic return.
- 18-31 After Shipp's recommendation reached COMAFV, it appears to have only been forwarded to the Secretary, Department of the Navy 'for information', together with recommendations for two members of the Australian Clearance Diving Team 3, who also did not receive any award. The fact that such recommendations were marked 'for information' may explain why no further action was ever taken in Australia, together with the fact the recommendations were forwarded over three weeks after the end of the January to June 1969 period, a period that was already over the assigned quota.
- 18-32 It was 1 Aviation Brigade practice to recommend all crewmen on an aircraft involved in a significant action for the same award.³³ The Tribunal was able to confirm that the three US Army personnel flying with Shipp received the DFC during their Vietnam service, and that the awards for Phillips and Bowden were for their actions on 31 May 1969.³⁴

32 Minute, HQ 1st Aviation Brigade, APO 96384, 30 June 1969, CNS Working File VN USN Recommendations — Held at the Directorate of Honours and Awards.

33 Lieutenant Colonel Walker Knight, Submission 187.

34 General order 22959: 1 Aviation Brigade: Military Personnel Records, Phillips, Dennis Michael; Martin, Steven Louis; Bowden, Byron Bill; National Personnel Records Center; St Louis, Missouri.

Australian awards for this action

- 18-33 Records indicate that in 1968, it was common practice for recommendations for US awards to be forwarded to COMAFV to make an initial assessment as to eligibility for equivalent imperial awards.³⁵ Four such recommendations were forwarded to COMAFV in 1968 and imperial awards were conferred to the members nominated, with one being made in direct relation to an action referred to by the US authorities (the case of Lieutenant Crawford — Distinguished Service Cross [DSC]). Other imperial awards were apparently made after consideration of the relevant US report (e.g. Lieutenant Commander Vickers — MID; and less apparently, Lieutenant Commander Ralph — DSC and Lieutenant Casadio — MID). All recommendations were considered at unit level, with the exception of Ralph, who was the Flight Commander of the RANHFV at the time. Candidates for awards could not nominate themselves.
- 18-34 The Tribunal noted that over the course of the Vietnam conflict, awards to RANHFV members were awarded periodically having regard to the quota and operational flying hours. As well as completely using the quota of awards allowed under the scale for the period 1 January to 30 June 1969, an entitlement for two awards within the previous period were not taken up and therefore those awards were included in the June return by the RANHFV. That gave four decorations in lieu of the quota of two, and consequently, no decorations were carried over or awarded in the second period July–December 1969.³⁶ A recommendation for Shipp was not included in that return. The US recommendation and draft citation in respect of Shipp's action was received at COMAFV, but only after that office had made its submission to Australia in respect of the operational honours and awards for the period ending 30 June. The quota had effectively been used up.
- 18-35 The practical application of this system appears to have been administratively cumbersome and apparently 'hit and miss'. The records show that the approach of using 'credits' from periods where awards were not claimed was viewed at Defence staff level as being inappropriate, at least for a time. The system as a whole was later described by Minister for the Navy, James Killen, as 'inequitable and quite ungenerous', but regardless, that was the system that was used and it was not amended.³⁷
- 18-36 In regards to wearing of American awards, one author has since stated that 'in the case of American awards, the review of foreign awards completed in 1994 finally gave Australian Vietnam veterans the right to wear their US medals'. This included the US Air Medal awarded to Shipp.³⁸
- 18-37 The Tribunal made an extensive search of the extant records, including Australian and US Archives, US Army records, RANHFV recommendations for honours and awards, and Shipp's personal file, but no other recommendations for Shipp were

35 COMAFV minute 40/11/1 24 May 1968; Chief of Naval Staff Minute 38-202-26, 18 June 1968. A1813 T19, 38/202/26. RANHFV Honours and Awards, held in RANHFV box file, RAN Sea Power Centre – Australia.

36 Awards for RANHFV Aircrew Personnel, 9 August 1971, A1813 T19, 38/202/26. held in RANHFV box file, RAN Sea Power Centre – Australia.

37 Covering note to minute on Honours and Awards for Service in Vietnam from the Chief of Naval Staff, 30 December 1970. A1813 T19, 38/202/26 held in RANHFV box file, RAN Sea Power Centre – Australia.

38 Eather, *Get the bloody job done*, pp. 142–143.

raised. The Tribunal concluded that while Shipp received a US Air Medal, he did not receive a posthumous imperial or US award for his actions on 31 May 1969.

Recognition for Shipp

- 18-38 While Shipp received no medallic recognition, he is certainly remembered. As well as on memorials within Australia, including at the RAN's Fleet Air Arm Museum in HMAS *Albatross* at Nowra, Shipp's name is commemorated at the 135th AHC Memorial at the US Army Aviation Museum Fort Rucker, Alabama, together with those of other members of the company who died while serving in Vietnam. The former members of the 135th AHC also maintain an extensive website that, among other aims, remembers those who paid the ultimate sacrifice.³⁹
- 18-39 On 18 September 2012, following comments made at a public hearing of the Tribunal on 31 May 2012, the Chief of Navy Vice Admiral Ray Griggs announced that one of the RAN's four recruit divisions at HMAS *Cerberus* would be named in honour of Shipp.

The view of the Shipp family

- 18-40 Mrs Gloria O'Flaherty, the widow of LACM Shipp, attended the public hearing in Sydney as an observer, and was invited to provide the Tribunal with a submission. The family fully support the award of the VC to LACM Shipp.

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

Arguments put forward in submissions for the award

- 18-41 Apart from Mrs Gloria O'Flaherty giving written support for her late husband's case, there were no other arguments provided in either written or oral submissions that advanced the award of the VC to Shipp.
- 18-42 There were a number of submissions that proposed other recognition:
- Commander Max Speedy, RANR, who flew in the Second RANHFV Contingent (Shipp's) presented the case for another award (which he suggested might be a Posthumous MID or Australian equivalent) for Shipp as he was 'worthy and deserving of lasting recognition'⁴⁰ [Oral submission and Submission 145].
 - Mr Michael Guard, former US Army crew chief with the 'Taipans' who replaced Shipp's crew offered the view that 'Noel Shipp should receive his long overdue awards', but no specific award(s) were mentioned.⁴¹ Mr Guard may have assumed (incorrectly) that LACM Shipp received no awards for his Vietnam service [Submission 189].

39 135th Assault Helicopter Company (EMU), www.135ahc.net, viewed 4 July 2012.
40 Commander Max Speedy, RANR, Public Hearing Melbourne, 15 December 2011.
41 Mr Michael Guard, Submission 189.

- Mr Bob Anders, in his interview, proffered his support for some form of recognition for Shipp, and suggested the US Silver Star as a minimum.⁴²

18-43 The Tribunal was not presented a case nominating a specific award for Shipp.

18-44 In conjunction with submissions for the Shipp case, the Tribunal received an application for the RANHFV to be awarded a Meritorious Unit Citation. This application has been included in Part 3 of this Report.

Arguments put forward in submissions against the award

18-45 The seven written submissions received against an award provided the following views:

- Shipp's sacrifice has been well recognised (by Navy) and he will not be forgotten. There is no need for an individual award (Submissions 35 and 235).
- The award of the VC to Shipp is not justified on the available evidence (Submission 35 and 235).
- It is regrettable that Shipp was killed, but he was simply doing his duty. He did nothing exceptional or otherwise deserving of a VC (Submissions 47 and 99, and Farthing oral submission).
- Shipp had no choice but to go down with the helicopter. He may not even have known it was crashing (Submission 47, 99, 123, 189 and oral submissions).
- Shipp's CO, Flight Commander (Rohrsheim), and comrades did not consider his efforts that extraordinary to justify a VC award (Rohrsheim oral submission).
- According to the Fleet Air Arm Association of Australia, many other members of the RANHFV performed feats of heroism that were equal to or greater than Shipp's. To give Shipp a VC and not recognise these others would be a huge travesty of justice (Submissions 35 and 35A, and oral submissions).
- Rather than recognise Shipp, the Fleet Air Arm Association of Australia proposes a Meritorious Unit Citation be awarded to cover all acts of valour. This would include Shipp (Submissions 35 and 35A, and oral submissions).
- Other RAN members of the flight (Acting Sub-Lieutenant AJ Heulin and Petty Officer Aircrewman O'BCI Phillips) were killed in very similar circumstances. They received nothing, so why should Shipp be singled out? What about Heulin and Phillips? (Submission 99).

Tribunal consideration of the award's process

18-46 The Tribunal first conducted a process review in accordance with the approach set out in paragraph 8-44 of this Report.

18-47 In his oral submission, Lieutenant Commander Rohrsheim stated that 'the only awards available to Shipp were a posthumous VC or MID and we decided on an MID I'm afraid'. The Tribunal could find no evidence of a recommendation.

42 Interview with Mr Bob Anders by Mr Jay Kopplemann, Tribunal Secretariat, 15 November 2011.

18-48 The Tribunal found that although no recommendation for Shipp was submitted, this was a valid decision made by the Flight Commander of the RANHFV and by those most competent to judge, and therefore, the process was conducted correctly. The Tribunal therefore concluded that the process followed was fair, just and correct at the time and there was no maladministration, bias, missing documentation or procedural flaws.

Tribunal review of the merits of the case

18-49 The Tribunal also considered, from all the material available to it, the merits of the case for recognising Shipp for his actions in Vietnam. This merits review was carried out in accordance with the Tribunal's approach as set out in paragraph 8-46 of this Report.

18-50 Mrs O'Flaherty in her written submission provided a letter from Shipp's CO, Major Woodmansee. While this was new material, it did not provide any new evidence. In his letter, Major Woodmansee states that: 'because of his [Shipp's] aggressive actions and the accuracy of his weapon, none of the troop filled aircraft were shot down and he [Shipp] performed his duties with courage, dedication and the skill of a professional soldier (sic)'. The Tribunal viewed this as a letter of condolence which described the fateful action and offered Mrs Shipp the unit's sympathy and support. The letter states that a memorial service was held on 1 June 1969, but makes no mention of any award.

18-51 Mr Bob Anders who witnessed the action, provided the Tribunal with a written statement and was interviewed by telephone. He confirmed what had happened to Shipp the day he was killed, but offered no new evidence to support a reconsideration of the case for an award.

18-52 The Tribunal placed great weight on the strong lack of support from the ex-Service organisations, and, in particular, the Fleet Air Arm Association, which noted 'that the award of the Victoria Cross to Leading Aircrewman Noel Shipp is not justified on the available evidence and further, would result in a substantial injustice to other members of the flight'.⁴³

18-53 No previously missing, new or compelling evidence was produced by submitters. The Tribunal therefore concluded that there was no basis to question the judgement of the commanders in 1969 or to now recommend that Shipp be awarded the VC for Australia or any other honour.

Tribunal conclusion

18-54 The Tribunal therefore concluded that on both process and merits, the case was properly considered at the time, followed due process and no new evidence was submitted to cause the Tribunal to recommend any medallic recognition. The Tribunal was informed that the RAN has recently chosen to recognise the sacrifice of LACM Shipp with the naming of a recruit school division at HMAS *Cerberus*. The Tribunal fully supports such a proposal and views this as appropriate recognition

⁴³ Submission 35 — Commodore Geoff Ledger, RAN (Retd), National President, Fleet Air Arm Association of Australia.

for Shipp in light of the evidence considered throughout the course of this inquiry. This will go some way to satisfying Commander Max Speedy and Mr Anders's suggestions that Shipp should receive some form of recognition. Other forms of recognition as discussed in Part 1 to this Report could also be considered by the RAN.

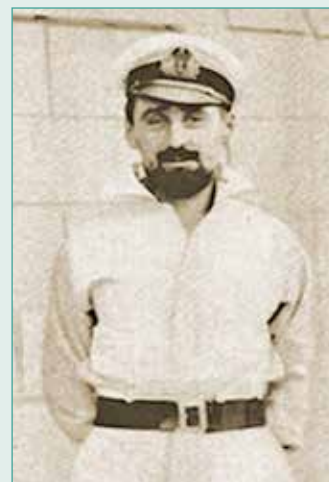
Tribunal recommendation

- 18-55 The Tribunal recommends no action be taken to award LACM Noel Ervin Shipp a VC for Australia or other further form of medallic recognition for his gallantry or valour, but other forms of recognition, as discussed in Part 1 of this Report should be considered.
- 18-56 The Tribunal also supports the steps that the RAN has recently taken to recognise Shipp in other ways. Particularly, the naming of a recruit division at HMAS *Cerberus*. The Tribunal suggests the perpetual recognition of Shipp in this manner.

CHAPTER NINETEEN

LIEUTENANT COMMANDER HENRY HUGH GORDON DACRE STOKER

19-1 Henry Hugh Gordon Dacre Stoker was born in Dublin, Ireland, on 2 February 1885. Early in his life, Dacre Stoker (as he was called by the family) decided on a naval career and was accepted into the RN in 1900, three weeks before his 15th birthday. In 1906 he accepted an offer to join the submarine service, and in the same year was promoted to lieutenant. In 1908, he was appointed to his first command, the submarine *A10*, before serving on the next generation submarine *B5*. He proved himself a capable leader, and next commanded the *B8*, before being posted to the British submarine station at Gibraltar.¹ With the outbreak of the First World War, Stoker was on loan to the RAN where he commanded the Australian submarine *AE2*. In 1915, *AE2* was the first Allied submarine to breach the Dardanelles. This action is the subject of this inquiry.



Lieutenant Commander Henry Hugh Gordon Dacre Stoker, Afion Kara Hissar Prisoner of War Camp, 1915

19-2 Following the loss of *AE2*, Stoker and his crew became prisoners of war. After the First World War, Stoker continued to serve in the RN and, in December 1919, was promoted to Commander. However, he chose to retire and went on to become an actor, writer and theatre director. He was recalled into naval service for the Second World War and served as acting Captain until the war's end.² He then returned to his theatrical career and died in February 1966.

Recognition for service

19-3 For his naval service, Lieutenant Commander Stoker was entitled to the following honours and awards:

- Distinguished Service Order (DSO)
- 1914–1915 Star
- British War Medal 1914–1920
- Victory Medal
- Naval General Service Medal 1915–1962
- 1939–1945 Star
- Africa Star
- Italy Star
- France and Germany Star
- Defence Medal

¹ Service Records, HHGD Stoker, TNA: ADM 196/127; and TNA: ADM 196/143.

² *ibid.*

- 1939–1945 War Medal
- Mention in Despatches (MID)

What has led to the review?

- 19-4 For some years, the *AE2* Commemorative Foundation, chaired by Rear Admiral Peter Briggs, RAN (Retd), has sought further recognition for Stoker, and in particular, recognition with an Australian honour.³ In addition, some (but not all) members of the Stoker family have argued that Stoker should have received the Victoria Cross (VC) as four other British submariners did for their exploits during Dardanelles operations in the First World War.
- 19-5 The inclusion of Stoker formally commenced on 19 October 2010 during an estimates hearing of the Senate Standing Committee on Foreign Affairs, Defence and Trade. A member of the Committee, Senator Guy Barnett (Liberal, Tasmania), named Stoker among six candidates he put forward for consideration of the award of the VC. Consequently, Stoker's name was added by the Parliamentary Secretary for Defence, to the list directed in the Terms of Reference to this Inquiry.⁴

The submissions

- 19-6 The Tribunal received 13 written submissions and heard 7 oral submissions regarding Lieutenant Commander Stoker. These are summarised in the following two paragraphs.

Written submissions

- Submission 21 — Rear Admiral Peter Briggs, RAN (Retd), (on behalf of the *AE2* Commemorative Foundation) (for)
- Submission 21A — Dr Michael White (support for *AE2* Commemorative Foundation position)
- Submission 60 — Mr Alfred Brogan (for)
- Submission 89 — Nowra-Greenwell Point RSL Sub-Branch (against)
- Submission 99 — Mr Graham Wilson (against)
- Submission 123 — Mr Peter Cooke-Russell, National Vice President, The Naval Association of Australia (for)
- Submission 124 — Mr Richard Pelvin (against)
- Submission 142 — The Navy League of Australia (against)
- Submission 171 — Mr Graham Snook (for)
- Submission 202 — Mr Richard Stoker (relative) (for)
- Submission 203 — Mr John Stoker (cousin) (for)

³ Oral submission by Rear Admiral Briggs (Retd), Public Hearing Melbourne, 14 December 2011.

⁴ Senate Foreign Affairs, Defence and Trade Legislation Committee, Parliament of Australia, Supplementary budget estimates, 19 October 2010, pp. 106–109.

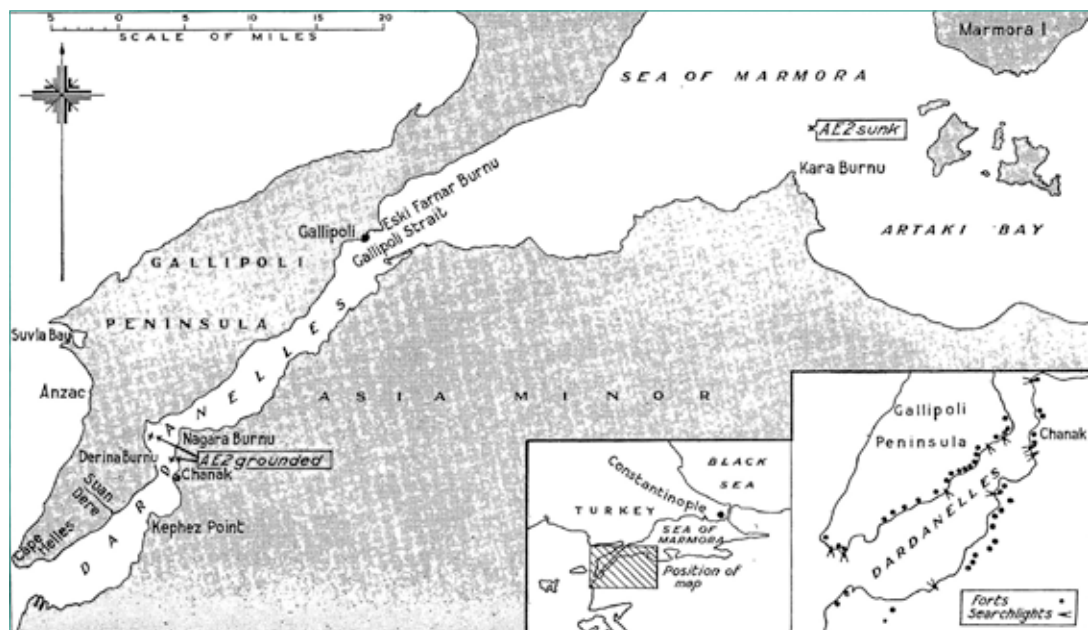
- l. Submission 204 — Mr Dacre Stoker (godson) (for)
- m. Submission 213 — Mr Walter Jenkins (great nephew) (against).

Oral submissions

- a. Mr Graham Wilson — Public Hearing Canberra — 1 December 2011 (against)
- b. Mr Richard Pelvin — Public Hearing Canberra — 2 December 2011 (against)
- c. Mr Peter Cooke-Russell (on behalf of the Naval Association) — Public Hearing Canberra — 2 December 2011 (for)
- d. Rear Admiral Peter Briggs, RAN (Retd), (on behalf of the AE2 Commemorative Foundation) — Public Hearing Melbourne — 14 December 2011 (for)
- e. Mr Alfred Brogan — Public Hearing Melbourne — 15 December 2011 (for)
- f. Mr Richard Stoker — Public Hearing Brisbane — 13 March 2012 (for)
- g. Commander Graham Harris, RAN (Retd), (the Navy League) — Public Hearing Canberra — 14 March 2012 (against).

Background

19-7 Australian submarine *AE2* was the second of a pair of submarines built in the United Kingdom for service with the RAN before the start of the First World War. The submarine was crewed by both RAN and RN officers and sailors, hence the AE designation. *AE2* had a complement of 35 and could cruise at 15 knots on the surface and 10 knots under water. *AE2* was armed with four 18-inch torpedo tubes (two fore and two aft) and could carry eight torpedoes. Operating endurance was about 16 days.



Note: The Sea of Marmara is also known as the Sea of Marmora.

Source: AW Jose, *The Royal Australian Navy, the official history of Australia in the War of 1914–1918*, vol. 9, Angus and Robertson, Sydney, 1938, p 240.

Map 6 Movement of the *AE2* in the Dardanelles and Sea of Marmara

- 19-8 In 1913, while on a three-year loan to the RAN, Stoker assumed command of the submarine *AE2*.⁵ Subsequently, *AE2* joined the second Australian Imperial Force (AIF) convoy, which sailed from Albany, Western Australia, on New Year's Eve 1914. On arrival in the Mediterranean, she made her way into the Aegean Sea in readiness for the plan to send a naval force through the Dardanelles to threaten Constantinople.
- 19-9 *AE2* was assigned to the Dardanelles patrol, guarding the mouth of the strait (see Map 6) against attacks from the Turkish fleet, which had recently been supplemented by the German battle cruiser *Goeben* and the light cruiser *Breslau*, now stationed in the Sea of Marmara (also known as the Sea of Marmora).
- 19-10 Between February and March 1915, Allied surface units had made a number of unsuccessful attempts to clear the Dardanelles of minefields and to reduce the forts that guarded them, this with a view to moving the fleet into the Sea of Marmara. Stoker documented in his memoir that after a couple of weeks' study he had formed the opinion that despite the difficulties involved, an attempt to dive a submarine through the Dardanelles and into the Sea of Marmara held sufficient chance of success to justify the attempt being made.⁶ While no Allied submarine had yet passed through the Dardanelles and into the Marmara, on 13 December 1914, Lieutenant Norman Holbrook, RN, had taken the older British submarine *B11* as far as Sari Siglar Bay, south of the (Dardanelles) Narrows at Chanak, where he torpedoed and sank the Turkish battleship *Messudieh*. For this action, Holbrook was awarded the VC.
- 19-11 Stoker recalls that on 23 April he was summoned by the Commander Eastern Mediterranean Fleet, Vice Admiral John de Robeck, RN.⁷ At this meeting he was ordered to proceed through the Dardanelles. If undiscovered, he was to attack shipping off Gallipoli, watch the approaches and await further orders. If discovered, he was ordered to attack any vessel in the vicinity of Chanak before proceeding to Gallipoli.⁸ In his Report of Proceedings submitted in January 1919, Stoker recorded that de Robeck's Chief of Staff, Commodore Roger Keyes, RN, advised him verbally to endeavour to sink (if possible) any mine-dropping ships found in the Narrows and 'generally to run amok'.⁹

Stoker's action on 25 April 1915

- 19-12 Stoker reported that in the early hours of 25 April, *AE2* entered the strait on the surface at around 0230. She was sighted and fired upon at around 0430, which forced him to dive and pass through the minefield at a depth of 70 to 80 feet, rising twice to check his position. After rising for the third time at around 0600, he found himself some two miles outside the Narrows, where he chose to remain

⁵ Record of Service [Officers] Card, NAA: A6769, 2002/05135599.

⁶ Commander HG Stoker, DSO, *Straws in the wind*, Herbert Jenkins Ltd, London, 1925, p. 89.

⁷ Stoker, *Straws in the wind*, p. 99.

⁸ *AE2* Sailing order, 23 April 1945. Provided by Rear Admiral Peter Briggs, RAN (Retd). From: ADM137 HSA319 HS2117.

⁹ *AE2* Report of Proceedings submitted 9 January 1919, TNA: ADM137 HAS 279 p. 1; and Stoker, *Straws in the wind*, p. 105.

submerged with his periscope up. He reported that he was again sighted and that AE2 came under heavy fire from both sides of the strait.¹⁰

19-13 Stoker next reported seeing a vessel off Chanak and decided to attack it, believing it might be dropping mines. Before doing so however, he then sighted a small cruiser, 'judged to be of Peike Shetrek type' and considering this might be more likely to carry mines, he decided to attack it instead.¹¹ Accounts vary as to what exactly took place in this engagement. The vessel is widely documented to have been the torpedo boat *Peykisevket*¹² or a light cruiser.¹³ Stoker launched a torpedo at 300–400 metres, but in order to avoid being rammed by another vessel, he was forced to dive and therefore unable to see what had taken place, but reported hearing the torpedo hit.¹⁴

19-14 After the engagement, Stoker found himself near the Gallipoli shore and under a fort. He reported being exposed in this position for approximately five minutes, and being under attack from naval units. The diary of crew member Petty Officer Stoker Henry Kinder indicates that at this time the gyro compass temporarily failed, which made navigation under water impossible.¹⁵ AE2 crew member Able Seaman John Wheat also wrote in his diary:

During all this the Captain remained extremely cool, for all depended on him at this stage. It is due to his coolness that I am now writing this account. Nobody knows what a terrible strain it is on the nerves to undergo anything like this, especially the Captain, as all depends on him.¹⁶

19-15 Stoker reported that after making some limited progress up the channel while under pursuit from surface vessels, he knew that he did not have the battery power to go very far into the Marmara. At 2100, he was able to surface and recharge his batteries.¹⁷ At this time he signalled his progress, but received no reply or acknowledgement owing to defective wireless equipment.¹⁸ It was only after the war that Stoker would learn that his signal did reach the naval command in theatre that evening. It has been widely regarded by those who have researched the impact of the AE2's successes on the first Anzac Day that the signal sent by Stoker was a significant factor in the theatre commander deciding against a withdrawal.

19-16 Keyes later wrote that as General Hamilton was penning a note to Lieutenant General Sir William Birdwood, Commander of the Anzac Corps, Keyes read aloud the signal received from Stoker and added, 'Tell them this. It is an omen — an Australian submarine has done the finest feat in Submarine history and is going to torpedo all the ships bringing reinforcements, supplies and ammunition into Gallipoli'. Keyes writes that Hamilton looked up, nodded and went on writing.¹⁹ Hamilton's reply to Birdwood, which urged him to 'dig ... right in and stick it out'

10 Stoker, *Straws in the wind*, pp. 109–110.

11 AE2 Report of Proceedings submitted 9 January 1919, p. 2.

12 MWD White, *Australian submarines: a history*, AGPS Press, Sydney, 1992, p. 53.

13 F Brenchley & E Brenchley, *Stoker's submarine*, Harper Collins, Pymble, NSW, 2001, p. 61.

14 AE2 Report of Proceedings submitted 9 January 1919, p. 2.

15 'Diary of Henry Kinder', AWM: PR01466, p. 12.

16 'Diary of Able Seaman John Harrison Wheat', AWM: DRL 2965, p. 9.

17 AE2 Report of Proceedings submitted 9 January 1919, p. 3.

18 Stoker, *Straws in the wind*, pp. 119–120.

19 R Keyes, *The fight for Gallipoli*, Eyre & Spottiswoode, London, 1941, pp. 127–128.

mentioned that 'the Australian submarine has got up through the Narrows and torpedoed a gunboat at Chanak'.²⁰

- 19-17 While there is no evidence that would now conclusively show that the news of *AE2*'s success was the determining factor in the continuation of the land campaign, this success must have at least provided a morale boost for those in command at a time of great difficulty. Some proponents believe Hamilton's comment to be significant to Stoker's case.

Stoker's action between 26 and 29 April

- 19-18 Stoker reported that at around 0400 on 26 April, *AE2* was able to proceed towards the northern end of the strait where he made an unsuccessful attack on one of two Turkish warships. Stoker put the failure down to the calm state of the sea and his personal error in overdoing an unseen attack.²¹ Following this, he reported making his way to the Gallipoli anchorage and on finding no suitable targets, continued his passage. At around 0900, *AE2* passed into the Sea of Marmara.²²
- 19-19 There was only one engagement on 27 April, when *AE2* attempted to torpedo a ship escorted by two destroyers. The torpedo failed to start and due to an escort attempting to ram the *AE2*, Stoker was unable to make another attack. Stoker next reported making two unsuccessful attacks in calm weather on 28 April. Following the second attack, which took place in the evening, *AE2* proceeded towards Gallipoli in the hope of having a better chance of making radio contact.²³

Stoker's Action on 30 April

- 19-20 Stoker's report for 30 April best describes the day's events that led to the loss of *AE2*:

Arrived R.V.[rendezvous] at 10 a.m. and sighted T.B. [torpedo boat — The *Sultan Hisar*] approaching from westward. Dived to avoid T.B. and whilst diving sighted smoke in Artaki Bay, so steered south to investigate. About 10.30 a.m. boat's nose suddenly rose, and boat broke surface about 1 mile from T.B. Blew water forward but could not get boat to dive. T.B. firing, got very close, and ship from Artaki Bay, a Gunboat, also firing at range of about 3 miles; flooded a forward tank, and boat suddenly took big inclination down by bows, and dived rapidly ... Went full speed astern and commenced to blow main ballast. After some interval ... boat broke stern first. T.B. was then close to, and fired two torpedoes; gunboat about 2 miles off. Boat ... dived very rapidly and passed 100 ft. depth going down fast ... After a considerable interval the boat [then] rose rapidly ... and broke surface stern first. Within a few seconds the engine room was hit, and holed in three places ... I therefore blew main ballast and ordered all hands on deck. Assisted by Lieutenant Haggard, I then opened the tanks to flood and went on deck. The boat sank in a few minutes in about 55 fathoms in approximate position 4°N of Kara Burna Point at about 10.45 a.m.²⁴

20 CF Aspinall-Oglander & AF Becke, *Military operations, Gallipoli*, W Heinemann, London, 1929, p. 269.

21 *AE2* Report of Proceedings submitted 9 January 1919, p. 4.

22 *ibid.*

23 *ibid.*

24 *AE2* Report of Proceedings submitted 9 January 1919, p. 5. Edited for brevity.

- 19-21 Whatever the cause of *AE2*'s sudden surface breach, Stoker clearly had limited options prior to ordering the crew to abandon ship. He could not dive, and, while *AE2* had one torpedo remaining, Stoker's report shows that he could not take the fight to the *Sultan Hisar* through any means other than by ramming, which he judged as a useless endeavour.
- 19-22 There is some suggestion, particularly among Turkish and German sources, that prior to being captured, some of the crew of *AE2* surrendered by either waving white sheets or striking a white flag.²⁵ A crew member, Chief Engineerroom Artificer Stephen Bell, wrote in his diary that Stoker told someone to get ready with something white.²⁶ While the crew did surrender, *AE2* was never allowed to fall into Turkish hands. In light of Stoker's report, this can be put down to the actions of Stoker and his second-in-command, Lieutenant Haggard, in scuttling the vessel.

Prisoners of war

- 19-23 Though all officers and men survived the action and became prisoners of war, four were to die in captivity, including diary-writer Able Seaman Albert Knaggs. Stoker led two escape attempts, on one occasion escaping with two other officers only to be recaptured and subject to court martial. Following his recapture he was somewhat bizarrely sentenced to 25 days' imprisonment. Upon his release, the full story of Stoker's accomplishment was revealed and comes mainly from his first-hand account, set out in his Report of Proceedings.²⁷ It was after this report had been received by the Admiralty that Stoker was awarded the DSO for his service in *AE2* and an MID for services during the war.

Significance of Stoker's action

- 19-24 Over time, a number of authors and historians have written about the significance of Stoker's actions in the Dardanelles campaign. As well as the achievement of passing the Dardanelles into the Marmara against significant navigational hazards, tethered mines and Turkish gunboats, many have put forward their views about the strategic importance of this submarine passage.
- 19-25 Following the presumed loss of the *AE2*, the Admiralty sent advice to the Australian Commonwealth Naval Board (ACNB). In doing so, they mentioned:
- The Board of the Admiralty desire to record their deep regret at the loss of this vessel with so many of her gallant crew after a memorable feat of arms and congratulates the Commonwealth on the high qualities of their Officers and Seamen.²⁸

25 Record, *AE2 in the Sea of Marmara*, Stiftung Traditionsarchiv Unterseeboote (Foundation of Submarine Archives). RAN Sea Power Centre – Australia *AE2* Box File; and C Avci, *Thirteen leagues under the Dardanelles*, Nart Yayıncılık, Istanbul, 2002, p. 91.

26 *AE2* Commemorative Foundation, Extract from the 'Diary of Engineerroom Artificer Stephen Thomas Bell', www.ae2.org.au/home_page.html#bell_story, viewed 1 March 2012.

27 Report by Lieutenant Commander Stoker, 9 January 1919, TNA: ADM 137, HSA 279; and Jose, *The Royal Australian Navy 1914-18*, pp 241–248.

28 Admiralty Telegram of 18 May 1915, AWM 50 18/3.

19-26 In 1916, Vice Admiral de Robeck noted the following on Stoker's service record:

[Stoker] is a capable and determined submarine captain, his submarine was in a very efficient condition when she joined the Eastern Mediterranean Squadron. *AE2* was the first submarine to make the passage of the Dardanelles into the sea of Marmara and her career up to the time of her loss — the circumstances of which are not known — reflects the greatest credit on Lieutenant Commander Stoker — his Chief Engineerroom Artificer and crew.²⁹

Witnesses to the action

19-27 Stoker's crew were all general witnesses to the action. The extant diaries of crew members Kinder, Knaggs and Brown³⁰ are usually offered as written evidence of Stoker's bravery and leadership. Turkish reports are also used to support the Stoker claims. It is not known whether the Admiralty called for any statements or further evidence in their 1919 consideration of Stoker's DSO.

Chain of command for honours and awards

19-28 While Stoker was in command of an Australian submarine, the chain of command was through Royal Navy channels. A recommendation for an award, had it been raised at the time, would have gone through Commodore Keyes, RN, to Vice Admiral de Robeck, RN, then on to the Admiralty. The Honours Committee at the Admiralty would then pass it to the Secretary of State for the Navy and on to the Sovereign for approval. Upon royal approval, the award was listed in the *London Gazette*, after which it became official.

19-29 In Stoker's case, the Admiralty apparently took Stoker's Report of Proceedings provided in 1919 after his release from Turkish prison as sufficient to process the award of the DSO. This was no doubt part of the finalisation of First World War awards when all the facts became known. The Admiralty would have been cognisant of the four VCs earned in the Dardanelles and no doubt took these previous awards into consideration. The Honours Committee, however, decided the DSO was the appropriate honour.

Honours and awards made for the action

19-30 While in captivity in 1915, Stoker wrote a private letter to the Chief of Naval Staff in Australia, Rear Admiral Sir William Creswell, RAN, where he mentions that officers and men were proud of the fact that an Australian warship was the first British vessel to pass through the Dardanelles and he hoped that Australia 'will consider it an honour worth winning'. This advice was forwarded by the ACNB to the Minister for the Navy, with the covering comment that the conduct of the officers and men would doubtless receive commendation by the court when they were tried for the loss of their vessel.³¹ No formal recommendation for an honour was raised at the time.

²⁹ Service Records, HHGD Stoker, TNA: ADM 196/127; and ADM 196/143.

³⁰ 'Diary of Engine Room Artificer Herbert Brown.' RAN Sea Power Centre – Australia *AE2* Box File.

³¹ Minute 15/7570'. NAA: MP472/1, 5/19/2520.

- 19-31 In late 1918, Stoker received a handwritten letter from King George V welcoming him home to England on his return from captivity.³²
- 19-32 Stoker submitted his Report of Proceedings in 1919, after which he and members of his crew were awarded a number of honours for this action. Stoker was awarded the DSO in April 1919. His citation reads:
- In recognition of his gallantry in making the passage of the Dardanelles in command of H.M. Australian Submarine 'A.E. 2', on the 25th April, 1915.³³
- 19-33 The *London Gazette* of 14 October 1919 included an Admiralty entry, which, among other things, included Stoker's MID in the following terms: 'being brought to the notice of the Admiralty for valuable services in the prosecution of the war'.³⁴ Records in the United Kingdom National Archives confirm that this was for good work during the outbreaks of influenza at Yozgat prison.³⁵
- 19-34 There were further honours for the crew of *AE2* to add to Stoker's DSO and MID. These included two Distinguished Service Medals and two MIDs for RAN sailors, and a Distinguished Service Cross and two MIDs to RN recipients.³⁶
- 19-35 Without the knowledge of the Honours Committee recommendation for Stoker, in February 1919, the Commonwealth Naval Representative in London forwarded Stoker's Report of Proceedings to the ACNB, with a covering letter recommending 'this officer [Stoker] for promotion, and pressing the claim for special consideration on the British Admiralty'.³⁷ Notes on the report show the Board felt 'this account appears to establish that *AE2* was the first Submarine to achieve the passage of the Dardanelles successfully', but no specific honour was mentioned.
- 19-36 The ACNB later wrote to Stoker in August 1919, expressing 'very high appreciation' for his performance 'in very exceptional danger' and explicitly mentioned 'an Australian submarine being the first to pass the Dardanelles Strait'.³⁸ The letter was written at the direction of Rear Admiral Creswell.³⁹ Creswell had desired in 1916 to express to Stoker and the other members of *AE2* the appreciation of the Board, however, a decision was made not to do so while they were in captivity, for fear of Turkish reprisal.⁴⁰
- 19-37 Notwithstanding the above recognition, in works published over time and in submissions to the Tribunal, a number of historians, authors and submitters have put forward the view that the VC would have been a more appropriate honour in recognition of Stoker's actions than the DSO. These arguments are often based on the fact that Stoker was the first Allied submarine commander to pass through the Dardanelles and into the Marmara and that four other submarine commanders who followed Stoker were awarded the VC for similar feats during the Dardanelles

32 HRH George V, letter, in possession of the Stoker Family, 1918.

33 *London Gazette* no. 31303, 18 April 1919, p. 5113.

34 *London Gazette* no. 31604, 14 October 1919, p. 12779.

35 Register, Officers Mentioned for Service in Post War Papers, TNA: ADM171/88.

36 *London Gazette* no. 31303, 18 April 1919 p5113; and Australian War Memorial, *AE2* (1914–1915), www.awm.gov.au/units/unit_10760.asp, viewed 29 February 2012.

37 'Letter, Commonwealth Naval Representative, HMA London Depot, 13 February 1919', AWM 36 bundle 49.

38 'Letter, Secretary, Australian Naval Board, 15 August 1919', AWM 36 bundle 49.

39 'Minute 19/3460', AWM 36 bundle 49.

40 Minute, Submarine *AE2* Circumstances Attending Loss of, Number 15/0192, Department of the Navy, 15 August 1919, AWM 36 bundle 49.

campaign. These sentiments are also echoed by more recent authors, Tom Frame and Greg Swinden, in their book *First in, last out, the Navy at Gallipoli* as well as members of the AE2 Commemorative Foundation and other submitters.⁴¹

A Victoria Cross for Stoker? Comparable actions

19-38 Stoker's actions have been broadly compared to other First World War submarine captains awarded the VC in the Dardanelles, and it is upon this that claims for a VC for Stoker are generally based. Four other RN submarine commanders, ND Holbrook, EC Boyle, ME Nasmith (sometimes called Dunbar-Nasmith) and GS White, received the VC for comparable efforts in the Dardanelles and in the case of White, after the main campaign had ended in 1918.⁴² Although some submissions claimed these four VCs as justification for a similar award for Stoker, no two cases are identical and all cases have to be taken individually and on their merits (see paragraphs 8-21 to 8-25 of this Report).

Other recognition for Stoker and AE2

19-39 Lieutenant Commander Stoker is remembered with a memorial to him and his crew at Garden Island Naval Dockyard in Sydney, and the Australian War Memorial has a display dedicated to the story of Stoker and the AE2. The Tribunal was advised that a memorial to AE2 and her crew is to be unveiled in Barrow and Gosport, England, in 2013 in commemoration of the 100th Anniversary of the launch of AE2. The Tribunal is not aware if the RAN intends to recognise Stoker in any other way.

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

Arguments put forward in submissions for the award

19-40 The main arguments put forward in support of Stoker's claim are as follows:

- Stoker was commander of the first submarine to breach the minefield and enter the Sea of Marmara. This was relayed to the Australian troops ashore and was a huge boost to morale. Stoker completed his orders and could have turned for safety, but chose to continue to further disrupt the enemy (Submissions 21, 21A, 60, 171, 203 and 204).

41 T Frame & G Swinden, *First in last out, the Navy at Gallipoli*, Kangaroo Press, Kenthurst, NSW, 1990, p. 101; Submissions 21, 21A, 60, 202, 203 and 204.

42 The four 'Dardanelles' submarine VC awardees were: Lieutenant ND Holbrook for action on 13 December 1914, *London Gazette* (LG) — 22 December 1914; Lieutenant Commander EC Boyle for action between 27 April and 18 May 1915, LG — 21 May 1915; Lieutenant Commander ME Nasmith (often listed as Dunbar-Nasmith) for action between 20 May and 8 June 1915, LG — 25 June 1915; and Lieutenant Commander GS White for action on 28 January 1918; LG — 24 May 1919; and D Harvey, *Monuments to courage: Victoria Cross headstones and memorials*, The Naval & Military Press, Uckfield, UK, 2008. The seven other naval VCs for action ashore during the Dardanelles campaign include: Lieutenant Commander EG Robinson from HMS *Vengeance* on 26 February 1915, LG 16 August 1915; and five during the landings on 25 April 1915: Sub-Lieutenant AWS Tisdall (posthumous); Commander E Unwin; Midshipman GL Drewry; Midshipman WS Malleson; Seaman GM Samson; Able Seaman WC Williams. All gazetted on 16 August 1915.

- Stoker did everything and more than the four RN submarine commanders who were awarded the VC. Stoker, therefore, should also have received the VC for this significant and heroic achievement (Submissions 21, 60, 171, 202, 203 and 204).
- Stoker's action on 25 April was 'a major contribution to the success of the landings. It was a direct result of Stoker's determination to press home his attack in the face of strong opposition and despite hazardous navigational circumstances, and should be considered in the assessment of awarding a medal for his bravery in the face of the enemy' (Submission 21A).
- Being the first through the straits and into the Sea of Marmara meant subsequent RN submarine commanders knew it could be done. While their efforts were also heroic, Stoker paved the way and took a greater risk (Submissions 21, 21A, 60, 171, 202 and 203).
- Stoker was denied a VC by the Admiralty simply because he was Irish and commanding a 'colonial' vessel. He was denied natural justice and this must be rectified (Submission 203).
- The DSO is an award for leadership, not bravery, so it does not replace the VC. Stoker's bravery also must be considered (Submission 21).
- There was an assertion that: 'AE2's efforts avoided the loss of many more Anzac lives' and 'was a major contribution to the success of the landings. It was a direct result of Stoker's determination to press home his attack, in the face of strong opposition ... and should be considered in the assessment of awarding a medal for bravery in the face of the enemy'. Stoker, therefore, deserves nothing less than the VC (Submissions 21, 21A and 60).
- Stoker's subsequent capture and time as a prisoner of war meant a time delay of several years before his story was told. This had a detrimental impact on any claim for a VC as the war was over. This meant his chances of the award were slim (Submission 60).
- AE2 and crew were attacked by shore-based batteries and attempts by enemy vessels to ram them. They persisted in their goal until finally forced to scuttle the submarine. They could have turned and escaped, but chose to fight on against terrible odds (Submissions 21, 60, 171, 203 and 204).
- Stoker's actions lasted a week, not minutes. Stoker's action was not spontaneous, 'it was calculated' (Submission 202).
- Awarding Stoker a VC would go a long way to healing the rift that seems to linger in Ireland (over the Easter Uprising in 1916 and subsequent unrest) (Submission 204).
- The Australian Navy did not receive a VC during the First World War, and this needs to be rectified. Stoker is the perfect candidate (Submission 123).
- Some of the extended Stoker family support the award of the VC for Stoker (Submissions 202, 202A, 203 and 204).

Arguments put forward in submissions against the award

- 19-41 The main arguments against Stoker's claim are as follows:
- Stoker was proud of his DSO and never sought further recognition (Submission 213).
 - Stoker was not Australian and was an officer in the RN. He was considered as such and was fairly dealt with through the normal British chain of command. The correct process was followed (Submissions 99 and 124).
 - Stoker was awarded the DSO for his service and leadership. The DSO is also for gallantry and is not offered lightly so Stoker has already received just recognition and reward (Submissions 89, 124, 142 and 235).
 - Stoker did not upset Turkish communications as other submariners in the Dardanelles did, and he lost his boat. No VC has ever been awarded to an officer who surrendered his vessel (Submission 99 and Wilson oral submission).
 - Boyle and Nasmith, who were awarded the VC, did not surrender, attacked the enemy and got their submarines safely out of the straits. Their cases were therefore different to that of Stoker (Submission 99).
 - Despite assertions to the contrary, the RN did receive its fair share of VCs during the First World War [43], including 11 for actions in the Dardanelles. The RAN was considered a part of the RN during that war (Submission 99).
 - Stoker effectively provided the only report of his actions. A recipient cannot nominate themselves (Submission 99).
 - It is improper for the Australian Government to award a deceased RN member a VC for Australia, and the Imperial VC is no longer available. If Stoker so deserves, then the Royal Navy should raise the issue further with Her Majesty (Submissions 99 and 124).
 - Not all the extended Stoker family support the award of the VC for Stoker. Four members are against any further recognition (Submission 213).

Tribunal consideration of the award process

- 19-42 In considering the case for a possible upgrade of the DSO to the VC for Australia or other form of recognition for Lieutenant Commander Stoker, the Tribunal first conducted a process review in accordance with the approach set out in paragraph 8-44 of this Report.
- 19-43 Because of Stoker's internment in a Turkish prison, recommendations for honours could not be raised until he and his crew had returned to the United Kingdom. Stoker produced his Report of Proceedings early in 1919, having previously received a letter from King George V welcoming him home. After the Admiralty received the report, they recommended a DSO in recognition of Stoker's efforts. This was published in the *London Gazette* on 18 April 1919. The Tribunal noted the Admiralty made seven other awards for the crew of *AE2*.
- 19-44 Correspondence dated 15 August 1919 indicates that after receiving Stoker's Report of Proceedings, the ACNB offered Stoker an expression of: 'their high appreciation of the services you [Stoker] carried out under conditions of very

exceptional danger’ and thanked him for ‘having achieved for the Australian Service the honour of an Australian Submarine being the first to pass the Dardanelles into the Sea of Marmora (sic)’.⁴³ The Board was well aware of Stoker’s accomplishments, but did not approach the Admiralty to alter his DSO award.

- 19-45 The Tribunal concluded that Stoker’s case was properly considered at the time, it followed due process and Lieutenant Commander Stoker was honoured with a DSO, which was what the Admiralty intended.

Tribunal review of the merits of the case

- 19-46 The Tribunal also considered, from all the material available to it, the merits of the case for elevating the recognition of Stoker for his actions in the Dardanelles. This merits review was carried out in accordance with the Tribunal’s approach as set out in paragraph 8-46 of this Report.
- 19-47 The submitters did not provide any new or further evidence in favour of the VC award that in the Tribunal’s view would call into question the judgement made by the Admiralty in 1919 that the appropriate recognition of Stoker’s achievements was the DSO.
- 19-48 Some submitters offered the diaries of three shipmates as evidence. These diaries do not contain enough in substance or wording to describe an outstanding ‘signal act of valour’ necessary to allow the Admiralty to consider Stoker for the VC.
- 19-49 Numerous submissions (21, 60, 171 and 203) claimed that Stoker did more than the four RN officers who received the VC, and that this was justification enough. But each case is considered on its merits and no two cases are the same. Stoker’s case only came to the Admiralty after the end of the war, and with the full knowledge of those who went before still fresh. The Admiralty made their decision based on the information available and chose not to seek additional supporting evidence at the time. The Tribunal placed no weight on the use of comparisons to reassess the merits of a case to support varying the extant recognition. As discussed at paragraph 8-48 of the Report, the Tribunal’s Guidelines for Conducting the Review reiterates that 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.
- 19-50 Submission 203 suggested that because Stoker was Irish there was some Admiralty bias against the award of the VC. The Tribunal could find no evidence of this alleged bias. In fact, throughout its history, the VC has been awarded 188 times to men born in Ireland and of Irish parentage.⁴⁴ Specifically, the Tribunal noted the case of Commander Edward Bingham, VC, RN, of County Down, Ireland, who was awarded the VC for his action in the Battle of Jutland. Bingham was one of only 23 VCs awarded to Navy personnel for actions at sea in the First World War.⁴⁵

⁴³ Stoker family records. Submission 204.

⁴⁴ Harvey, *Monuments to courage: Victoria Cross headstones and memorials*.

⁴⁵ Members of the Royal Navy were awarded 43 VCs for the First World War. These were 23 for action at sea, 18 for action on land and 2 for action in the air. See Report Part 1, Table 8-1.

- 19-51 Submission 203 also claimed that as Stoker was in command of a 'colonial' vessel that this somehow prevented Stoker and his crew receiving their just reward. On the contrary, the Tribunal found that *AE2*'s RN and RAN crew were equally rewarded, and that captains and crews of other RN submarines (e.g. *E20*, lost in November 1915) who were unsuccessful, received no honours.
- 19-52 The Stoker family submitted a hand-written letter sent to Stoker by His Majesty King George V in December 1918 that welcomed Stoker home after his internment by the Turkish. The letter indicates that Stoker was known personally to the King and he was held in high regard by the Royal Family. The Tribunal noted that this correspondence pre-dated the Admiralty's consideration of Stoker's report and was unable to see how it could be concluded that the letter now provides any basis for calling into question the Admiralty's recommendation that the appropriate level of recognition was the DSO.
- 19-53 No previously missing, new or compelling evidence was produced by submitters. The Tribunal therefore concluded that there was no basis to question the judgement of the Admiralty in 1919 and now recommend that Stoker be awarded the VC for Australia.

Tribunal conclusion

- 19-54 The Tribunal therefore concluded that on both process and merits, the case was properly considered at the time, followed due process correctly and that Lieutenant Commander Stoker was appropriately honoured with a DSO.

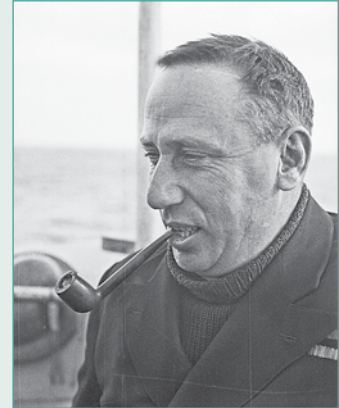
Tribunal recommendation

- 19-55 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.

CHAPTER TWENTY

CAPTAIN HECTOR MACDONALD LAWS WALLER

20-1 Hector Macdonald Laws Waller was born on 4 April 1900 at Benalla, Victoria, one of 10 children born to William and Helen Waller. In 1913 he joined the RAN, entering the RAN College (RANC) as a cadet midshipman. He was Chief Cadet Captain in his final year at the RANC in 1917 and was awarded the King's Medal on graduating.



Captain Hector Macdonald Laws Waller

First World War and between the wars

20-2 On 1 January 1918 he was promoted to midshipman. Sent to Britain, Waller served in the battleship HMS *Agincourt* in the Grand Fleet for the remainder of the First World War. In 1919 Waller returned to Australia and served in HMAS *Melbourne*, and was promoted to Lieutenant in March 1921. He joined the staff of the RANC in 1923. In 1924 he returned to Britain for a signals course and, in 1926, in Australia, was in charge of the Signals and Wireless Telegraphy School at Flinders Naval Depot. From 1926 to 1928 he was again on loan to the RN as Signals Officer in HMS *Broke*. Returning to Australia, Waller was promoted to Lieutenant Commander in 1929. He served in HMAS *Australia* as Squadron Signals Officer in 1930. Promoted to Commander in 1934, he became Executive Officer of the RANC.

20-3 In 1936, on his fourth period of service with the RN, Waller spent six months with the Admiralty's Naval Intelligence Division. Then, from 1937 to 1939, he commanded the destroyer HMS *Brazen*, which deployed off the coast of Spain during the Spanish Civil War.

Second World War — Europe

20-4 On returning to Australia in mid-1939, after a short spell in Navy Office, Waller was posted in command of HMAS *Stuart* on 1 September 1939. At the beginning of the Second World War, and after service on the Australian east coast, HMAS *Stuart* led a five-ship Australian force that arrived in the Mediterranean in December 1939. Also known as the 'scrap iron flotilla' because of the age of the ships, the 19th Destroyer Division under Waller quickly earned a reputation for success in battle.

20-5 On 27 May 1940 the five Australian destroyers were joined by four from the RN to form the 10th Destroyer Flotilla under Waller's command. On 10 June 1940 Italy entered the war. Soon after (12 June 1940), *Stuart* became trapped in a minefield laid by Italian submarines. Exercising considerable judgement and skill, Waller manoeuvred *Stuart* through the mines, marking the field as he went to protect other Allied warships in that area of the Mediterranean. Waller was promoted to Captain on 30 June 1940. *Stuart* was soon involved in the Battle of Calabria in July. On 11 September 1940 Waller was appointed a Companion of the Distinguished

Service Order (DSO) for his work in the minefields, with the citation reading for 'courage, enterprise and devotion to duty in recent engagements'.¹

- 20-6 Waller continued in command of the 10th Flotilla in the Mediterranean until the end of September 1941. During the period, the 10th Flotilla played a significant role in the evacuation of Australian and Allied troops from Greece and Crete. HMAS *Stuart* was then directly involved in the capture of the port of Tobruk, and the ongoing resupply by night to the 'Rats'.
- 20-7 For 'bravery and enterprise' at the Battle of Matapan (March 1941) Waller received a Bar to his DSO² and was twice Mentioned in Despatches — once for his courage and skill and devotion to duty off the Libyan Coast; and the second for gallantry and distinguished service in Greek waters.³
- 20-8 Commander Philip Owen, RANR(S), wrote in the *Naval Historical Review* of August 1972 that, 'At Flinders Naval Depot in 1951, Sir Robert Menzies said this:⁴
- I inspected several Naval ships in Alexandria Harbour during 1941 with Commander-in-Chief, Mediterranean Fleet, Admiral Sir Andrew Cunningham. As we approached Stuart Sir Andrew said to me, 'And now you are going to meet one of the greatest Captains who ever sailed the seas — his name is Waller.'⁵
- 20-9 When Waller left the Mediterranean to return to Australia in September 1941, Admiral Cunningham wrote that despite HMAS *Stuart* being 'seriously in need of a refit' and with one engine out of action:
- It is with regret that we part with HMAS *Stuart* ... Under the distinguished command of Captain Waller she has an unsurpassed record of gallant achievement ... the Mediterranean Fleet is the poorer by the departure of this fine little ship and her gallant ship's company.⁶

Second World War — South-East Asia and the Pacific

- 20-10 On 24 October 1941, Waller assumed command of HMAS *Perth*, which had also returned from the Mediterranean in early August 1941 for a refit, completed on 22 November 1941.
- 20-11 In December 1941 and January 1942, *Perth* undertook patrols to New Caledonia and New Guinea, and under orders sailed from Sydney for the Netherlands East Indies via Fremantle on 31 January 1942.⁷ After some further short escort duties, *Perth* arrived at Batavia, on the island of Java, on 24 February 1942.

1 *Supplement to the London Gazette*, no. 34943, 11 September 1941, p. 5469.

2 *Third Supplement to the London Gazette*, no. 35443, 3 February 1942, p. 553.

3 *Third Supplement to the London Gazette*, no. 35231, 29 July 1941, p. 4370; and *Third Supplement to the London Gazette*, no. 35342, 11 November 1941, p. 6495.

4 Owen was posted to *Hobart*, and was embarked in *Perth* in order to reach *Hobart*, which was at Tanjong Priok. However, Owen's attempts to transfer to *Hobart* were hampered by enemy action in the harbour, that prevented the transfer. Owen remained in *Perth*, and was embarked at the time of its sinking. Commander P Owen, 'Captain HML Waller DSO and BAR, RAN', *Naval Historical Review*, August 1972, www.navyhistory.org.au/captain-h-m-l-waller-dso-and-bar-ran, viewed 17 September 2012.

5 *ibid.*

6 Michael Simpson (ed.), *The Cunningham papers — Volume 1: The Mediterranean Fleet, 1939–1942*, Navy Records Society Ashgate, 1999 p. 503, as quoted in Tom Lewis, *The submarine six*, Avonmore Books, Adelaide, 2012, p. 167.

7 War Diary of HMAS *Perth* for the month of February 1942, dated 1 October 1945, signed by Lieutenant Commander J Harper, RN, NAA: AWM78, 292/3; and NAA: MP1185/8, 1932/2/200.

- 20-12 *Perth* had moved from the Anzac Area⁸ to the American–British–Dutch–Australian (ABDA) Area of command, which, although only set up in mid-January 1942, was in its last days of operations. The ABDA naval operations were then under the overall direction of Dutch Vice Admiral Conrad Helfrich; although Commodore John Collins, CB, RAN, as Commodore Commanding China Force (CCCCF), was in command of the British and Australian naval forces, including *Perth*.
- 20-13 By 27 February 1942, the only capable Allied naval fighting force standing between the Japanese and the conquest of Java was an ABDA Striking Force consisting of 14 vessels (US, Dutch, British and Australian) under command of Dutch Rear Admiral Karel Doorman. This fleet, including *Perth*, sailed from Surabaya into the Java Sea to intercept the eastern of two Japanese invasion convoys bound for Java. In a series of attempts to get around the covering force to attack the vulnerable Japanese transports, the ABDA Strike Force was soundly defeated, losing 5 of 14 ships, and its commander, Rear Admiral Doorman. As the senior naval captain remaining, Waller was now in command. Both *Perth* and USS *Houston* withdrew at high speed to Tanjung Priok.
- 20-14 Having reached Tanjung Priok in the early hours of 28 February, the two cruisers left for Tjilatjap later that day; believing, on the basis of intelligence reports, that they would not be troubled by Japanese naval elements that were allegedly still approaching Java from the north-east.⁹ Unfortunately, just after passing the western tip of northern Java, they encountered a major Japanese force. *Perth* and *Houston* immediately engaged this force, fought well and, for a while, held their own.
- 20-15 Waller, being informed that *Perth*'s supply of six-inch shells had almost been exhausted, decided to force a passage through the Sunda Strait. Although *Perth* up till this point had received little damage, the Japanese destroyers had closed in around *Perth* and *Houston*. *Perth* was then struck by three torpedoes and sank at approximately 0025 on 1 March. Waller was not among the survivors. *Houston* was also sunk, at approximately 0045, its captain going down with the ship.
- 20-16 It is *Perth*'s and Waller's actions during the Battles of the Java Sea (26–27 February) and Sunda Strait (28 February – 1 March) that are the subject of this inquiry.

Recognition for service

- 20-17 For his naval service, Captain Hector Waller was entitled to the following Defence honours and awards:
- Distinguished Service Order and Bar
 - British War Medal 1914–1920
 - Victory Medal
 - 1939–1945 Star
 - Africa Star

⁸ The Anzac Area covered the east coast of Australia, New Zealand, and extended north to the equator.

⁹ Report from Lieutenant Commander J Harper, RN, to the Naval Board, 1 October 1945, NAA: MP1185/8, 1932/2/200.

- Pacific Star
- Defence Medal
- War Medal 1939–1945
- Australia Service Medal 1939–1945
- King George Silver Jubilee Medal
- Mention in Despatches (MID).

What has led to the review?

- 20-18 Between March and June of 1942, over 270 newspaper articles were written on the loss of HMAS *Perth*. The *Sydney Morning Herald*, on 5 March 1942, printed a denial by the Minister for the Navy, The Hon. Norman Makin, MP, of a Tokyo Radio report that claimed that the Japanese had sunk HMAS *Perth* and HMAS *Hobart*. The Prime Minister, The Hon. John Curtin, MP, subsequently announced the losses of HMA Ships *Perth* and *Yarra* on 13 March 1942. An Admiralty communiqué of 14 March 1942 giving an account of the Battle of the Java Sea was printed in Australian newspapers. The communiqué conceded that five Allied cruisers, seven destroyers and the sloop HMAS *Yarra* had been sunk by the Japanese during the battle and in engagements on subsequent days.¹⁰ *The War Illustrated*, printed in London, picked up the story on 2 April 1942. The article included information of the Allied ships present during the Battle of the Java Sea and its aftermath.
- 20-19 On 12 August 1943, a plaque to HMAS *Perth* was unveiled during a ceremony at the Perth Town Hall. Representatives from three navies (Australian, US and Dutch) were present and spoke during the ceremony, which was conducted in the presence of many relatives of the men from *Perth*.¹¹ Two years later, on 10 October 1945, 12 survivors from *Perth*, who had recently been freed from prisoner of war camps, visited the Perth Council Chambers and saluted the plaque, 'in tribute to dead comrades and sunken ship'.¹²
- 20-20 On 3 March 1945, near the third anniversary of the sinking of HMAS *Perth*, *The Canberra Times* pieced together a story from the four sailors who were picked up by Allied forces. The remaining survivors were all still believed to be prisoners of war.
- 20-21 Almost from the moment that the first survivors of *Perth* returned to Australia in 1945 from Japanese prison camps, there was questioning of why Waller had not received a major decoration (if not the Victoria Cross [VC]). Commander Owen raised the issue directly with the Navy Office in early 1946, recommending that Waller be awarded the VC. He was counselled to 'let the dead past bury itself'. He

10 '13 Allied warships lost in battle off Java; Not daunted by big odds; Eight enemy ships sunk or damaged; Desperate efforts to reach Australia', *The Advertiser*, 16 March 1942, p. 1; and 'Admiralty account of Java Sea battle; Heavy Allied losses', *Morning Bulletin*, 16 March 1942, p. 5.

The Allied ships named as having been lost were the cruisers HMS *Exeter*, HMAS *Perth*, USS *Houston*, HNLMS *Java* and *De Ruyter*; the destroyers HM Ships *Jupiter*, *Electra*, *Encounter*, *Stronghold*, USS *Pope* and HNLMS *Kortenaer* and *Evertsen*; and the sloop HMAS *Yarra*.

11 'Three navies honour *Perth*', *The Daily News*, 1 August 1943, p. 4; also 'HMAS *Perth* plaque unveiled', *The West Australian*, 13 August 1943, p. 4; and 'HMAS *Perth* plaque', *Western Mail*, 19 August 1943, p. 19.

12 'Salute to valour', *The West Australian*, 11 October 1945, p. 3.

responded, 'That may be so — but what about Waller. Is he not to be awarded a posthumous Victoria Cross?' To this question he received no answer.¹³

- 20-22 On 1 March 1947 the anniversary of the sinking was remembered by Lieutenant Neville Lyons (first officer to return home) who laid a wreath on the cenotaph in Sydney, on behalf of the men of HMAS *Perth*.
- 20-23 On 17 October 1955, *The Argus* (a former Melbourne newspaper) carried an article advising of the death of Captain Waller's father, titled 'Hero's father dies at 97'.
- 20-24 On 21 February 2011, the Parliamentary Secretary for Defence, Senator The Hon. David Feeney, in his letter to the chair of the Tribunal (referring this Inquiry to the Tribunal), wrote:
- I write concerning the recent public debate which has emerged following the publication of Mr Mike Carlton's account of the World War II cruiser HMAS *Perth*, commanded by Captain Hec Waller DSO and Bar RAN, which was lost in the Battle of the Sunda Strait on 1 March 1942 ... This public debate subsequently became the subject of discussion at the 19 October 2010 hearing of the Joint Standing Committee on Foreign Affairs Defence and Trade, and Defence undertook to explore these public calls.¹⁴
- 20-25 A member of the Committee, Senator Guy Barnett (Liberal, Tasmania), had named Waller among six candidates he put forward for consideration of the award of the VC.¹⁵ Subsequently, Waller's name was added to the Terms of Reference for this Inquiry.
- 20-26 The Waller family, who had not previously sought any review, supports consideration of Captain Waller for the award of the VC for Australia, and provided a written submission.
- 20-27 On 1 August 2011, ABC television ran an 'Australian Story' episode titled 'A measure of courage', which discussed the reasons behind the Navy not awarding the VC to Hec Waller or Teddy Sheean.

Submissions

- 20-28 The Tribunal received 13 written submissions, and heard nine oral submissions regarding Captain Waller.

Written submissions

- a. Submissions 33 and 33A — Commander John Waller, RAN (Retd), on behalf of the Waller Family (for)
- b. Submission 86 — Mr John Bradford (for)
- c. Submissions 87 and 87A — Ms Pattie Wright (for)

13 Commander P Owen, 'Captain HML Waller DSO and BAR, RAN', *Naval Historical Review*, August 1972, www.navyhistory.org.au/captain-h-m-l-waller-dso-and-bar-ran, viewed 17 September 2012.

14 Letter, Senator The Hon. David Feeney, Parliamentary Secretary for Defence, to Emeritus Professor Dennis Pearce, AO, Chairman, Defence Honours and Awards Appeals Tribunal, dated 21 February 2011.

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

- d. Submission 89 — Nowra Greenwell Point Returned & Services League Sub-Branch (against)
- e. Submission 92 — Mr Mike Carlton (for)
- f. Submission 99 — Mr Graham Wilson (against)
- g. Submission 106 — Dr Tom Lewis (for)
- h. Submission 123 — Mr Peter Cooke-Russell, National Vice President, Naval Association of Australia (for)
- i. Submission 124 — Mr Richard Pelvin (against)
- j. Submission 125 — Mr Robert Brown (against)
- k. Submission 165 — Mr DW Manning (for).

Oral submissions

- a. Mr Graham Wilson — Public Hearing Canberra, 1 December 2011 (against)
- b. Mr Richard Pelvin — Public Hearing Canberra, 2 December 2011 (against)
- c. Mr Peter Cooke-Russell, National Vice President, Naval Association of Australia — Public Hearing Canberra, 2 December 2011 (for)
- d. Ms Pattie Wright - Public Hearing Melbourne, 14 December 2011 (for)
- e. Commander John King, RAN (Retd), President, HMAS *Perth* Association — Public Hearing Sydney, 8 February 2012 (for)
- f. Mr Mike Carlton — Public Hearing Sydney, 8 February 2012 (for)
- g. Mr Gavin Campbell, survivor HMAS *Perth* — Public Hearing Sydney, 9 February 2012 (for)
- h. Mr Frank McGovern, survivor HMAS *Perth* — Public Hearing Sydney, 9 February 2012 (for)
- i. Mr John Bradford — Public Hearing Adelaide, 14 February 2012 (for)
- j. Mr Graham Harris, President, Navy League of Australia — Public Hearing Canberra, 13 March 2012 (for).

Background

HMAS Perth

20-29 Commissioned in 1936, HMS *Amphion* was a 6,800 ton light cruiser. In an agreement between the Australian and British Governments, *Amphion* was transferred to the RAN and subsequently commissioned as HMAS *Perth* in 1939. *Perth* had a top speed of 32 knots, and was armed with eight 6-inch guns, four twin 4-inch guns, four 3-pounder guns, four 2-pounder guns and eight 21-inch torpedo tubes. It also carried a Walrus amphibian aircraft on board.¹⁶ At the time of her sinking, *Perth* had a ship's complement of 45 officers and 626 men, and had

¹⁶ Royal Australian Navy, HMAS *Perth* (II), www.navy.gov.au/hmas-perth-i, viewed 15 November 2012.

embarked 6 members of the RAAF and 4 civilian canteen workers.

20-30 From 1939, *Perth* carried out escort and patrol duties in the West Indies and West Atlantic, returning to Sydney in March 1940. In June 1940, Captain Sir Phillip Bowyer-Smyth, RN, took over command from Captain Harold Farncomb, RAN. *Perth* was engaged in patrols and escort work around Australia until November 1940, when, on 28 November, she left Fremantle as an escort for the seventh Middle East convoy, US 7.



HMAS *Perth* (I)

(Photograph courtesy of the Royal Australian Navy)

20-31 On 12 August 1941, *Perth* arrived back in Sydney, and the following day moved to Cockatoo Dockyard for an extensive refit. Acting Commander Charles Reid, RAN, assumed command on 1 September 1941, and was relieved by Captain Hector Waller, RAN, on 24 October 1941. After completion of her refit on 22 November, *Perth* was engaged in exercises from 24 to 30 November, and then sailed for Auckland. She carried out patrols, escort duties, exercises and manoeuvres during December 1941 and January 1942, visiting New Caledonia and New Guinea.

20-32 On return to Australia in late January, *Perth* received orders from the War Cabinet to proceed to Fremantle. The War Cabinet decision was in response to a request from the Combined Chiefs of Staff in Washington 'that HMAS *Perth* should be allocated to the ABDA Area as soon as possible'.¹⁷ Initially, *Perth* was directed to escort Dutch merchant vessels (oil tankers and a general cargo ship) (MS4) from Fremantle to Batavia. *Perth* departed from Sydney on 31 January 1942, and took over the escort of Convoy MS4 from HMAS *Adelaide*. *Perth's* orders were changed, and all but one Dutch vessel in MS4 was left in Fremantle — but *Perth* was joined en route by two more Dutch vessels. On 21 February 1942, just short of the Sunda Strait, *Perth* and the convoy were ordered back to Fremantle. *Perth* escorted the three Dutch vessels to within 700 nautical miles of Fremantle. It was then ordered to leave the Dutch ships and to proceed to Batavia.

20-33 *Perth* arrived at Batavia, on the island of Java, on 24 February, where it was attacked by Japanese aircraft during that day and the next without sustaining damage. *Perth* berthed alongside HMAS *Wollongong* (a corvette with the 21st Minesweeping Flotilla, assigned to China Force) and was joined the next day by HMA Ships *Hobart* and *Yarra*. All ships were again subject to bombing, but were undamaged. However, the seaplane on HMAS *Perth* was put out of action by the blast of its four-inch guns firing at the Japanese. Other Australian ships in the ABDA Area of operations conducting patrols and convoy escort duties were HMAS *Vampire* (destroyer), and the other corvettes of the 21st Minesweeping Flotilla comprising HMA Ships *Maryborough*, *Toowoomba*, *Ballarat*, *Bendigo*, *Goulburn* and *Burnie*.

¹⁷ '1787 — Allotment of HMAS *Perth* to American-British-Dutch-Australian Area', Minutes of War Cabinet Meeting, Melbourne, 29 January 1942, NAA: A5954, 807/2.

The American–British–Dutch–Australian Command arrangements

- 20-34 On the outbreak of war with Japan in December 1941, the Combined Chiefs of Staff in Washington decided on the creation of a single command to combat the rapidly advancing Japanese thrust into South-East Asia. ABDA was intended to direct operations of all Allied forces in the general area of Burma, Malaya, the Netherlands East Indies and the Philippines.¹⁸ It was further decided that the British General Sir Archibald Wavell was to be appointed Supreme Allied Commander of the (new) ABDA Area.¹⁹
- 20-35 General Wavell's directive, dated 3 January 1942, included the following statement:
- The basic strategic concept of the ABDA Governments for conduct of war in your area is not only in immediate future to maintain as many key positions as possible but to take offensive action at the earliest opportunity and ultimately conduct an all-out offensive against Japan.²⁰
- 20-36 Admiral Thomas Hart, United States Navy (USN), was initially appointed in charge of the naval component of ABDA with the title ABDAFLOAT. Rear Admiral Arthur Palliser, RN, was his deputy. These appointments necessitated a successor to Palliser to command the British convoy escort group, and Captain John Collins, RAN, was appointed Commodore Commanding British Far Eastern Squadron, which was designated as China Force from 20 January. On its formation, China Force consisted of the cruisers HM Ships *Dragon*, *Durban* and *Danae*, the destroyers HM Ships *Jupiter*, *Encounter*, *Express*, *Electra*, *Stronghold* and HMAS *Vampire* and the sloops HMAS *Yarra* and HMIS *Jumna*.²¹ As will be seen later, *Perth* reported to Collins on arriving in the ABDA Area, and joined HMAS *Hobart*, which had been in the area since late January.
- 20-37 The ships of China Force rendezvoused with and assumed responsibility for incoming convoys from their ocean escorts just outside the Sunda Strait, which separates the islands of Java and Sumatra, and escorted outgoing convoys to the Indian Ocean. There, they either dispersed them or handed them over to an ocean escort (see Map 7). In early 1942, as the Japanese pressed southwards, the threat of air and surface attacks were added to the existing dangers of submarines and mines.²²

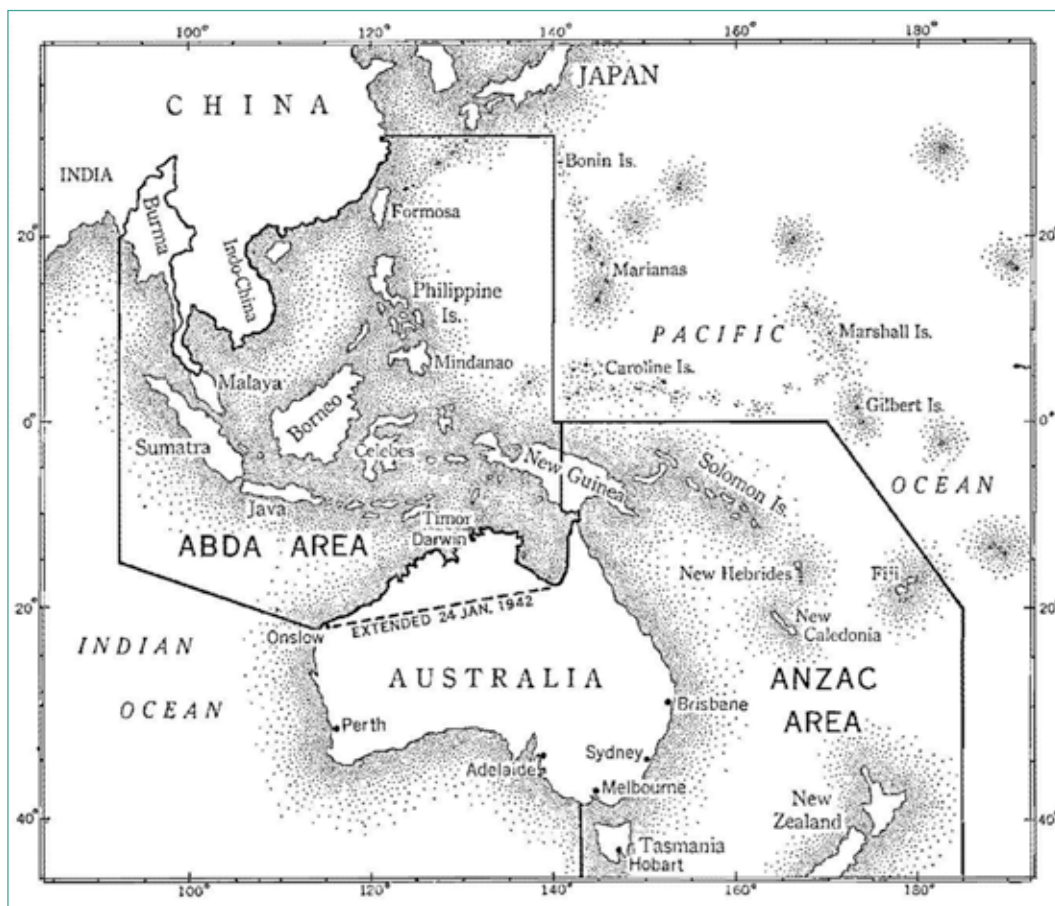
18 The Combined Chiefs of Staff (CCS) was a body formed during the Arcadia Conference, in December 1941, between British Prime Minister Winston Churchill and the US President Roosevelt. The CCS consisted of the Chiefs of Staff of the UK and US armed forces.

19 Preface by the War Office to the 'Despatch by the Supreme Commander of the ABDA Area to the Combined Chiefs of Staff on the Operations in the South-West Pacific 15 January 1942 to 25 February 1942', NAA: A5954 1979/85.

20 Appendix A of 'ABDACOM' Directive to Supreme Commander dated 3 January 1942 in 'Despatch by the Supreme Commander of the ABDA Area to the Combined Chiefs of Staff on the Operations in the South-West Pacific 15 January 1942 to 25 February 1942', NAA: A5954 1979/85.

21 George Hermon Gill, *Royal Australian Navy 1939–1942*, vol. 1, *Australia in the War of 1939–1945*, series 2, Australian War Memorial, Canberra, 1957, p. 517.

22 *ibid.*, p. 518.



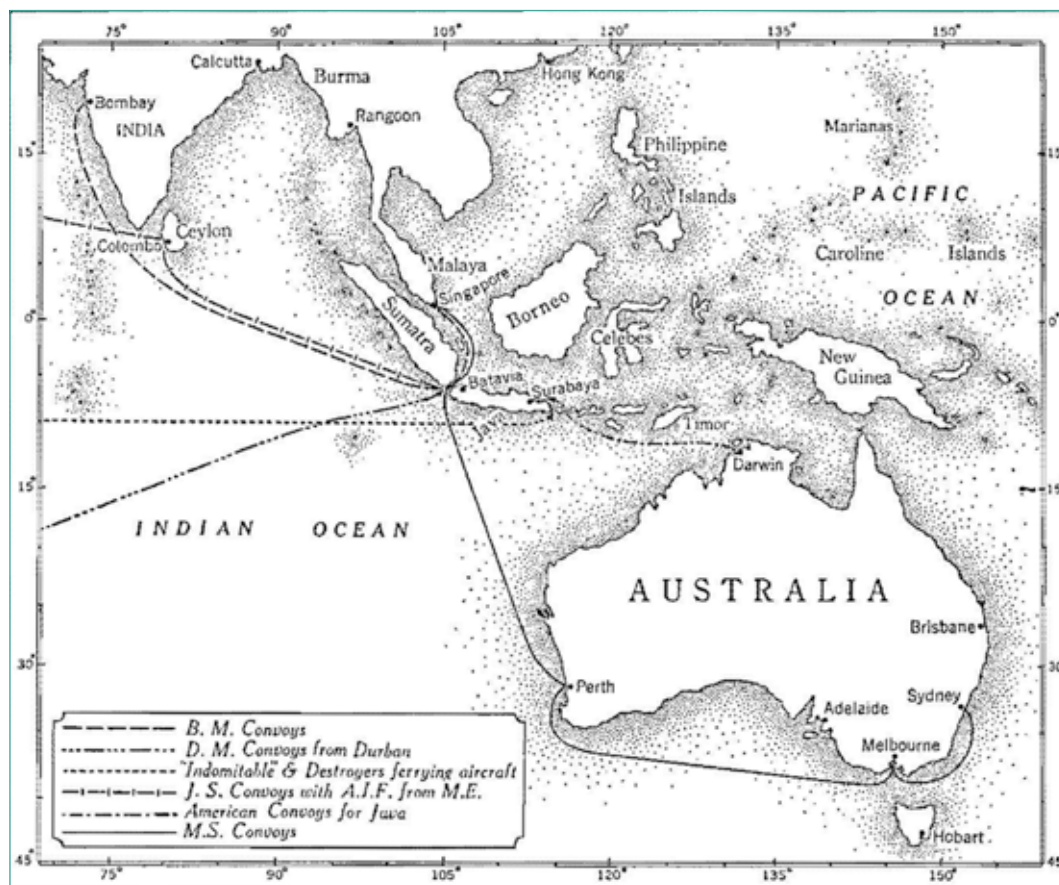
Source: Gill, *Royal Australian Navy 1939–1942*, p. 520.

Map 7 The ABDA and ANZAC areas of operations

- 20-38 With Hart's appointment, Vice Admiral Sir Geoffrey Layton, RN, Commander-in-Chief (C-in-C) Eastern Fleet, ceased to be responsible for the conduct of naval operations and strategy in the area. Layton sailed for Colombo on 16 January.²³ Even after Layton had departed, the naval forces in the ABDA Area continued to operate under their own national commanders, with effort in the area being coordinated by directives issued by ABDAFLOAT. When forces of mixed nationality were formed for any particular operation, ABDAFLOAT would designate a commander. Thus, Hart would still command the US Asiatic Fleet, the Dutch Vice Admiral Conrad Helfrich remained in command of Dutch forces, and Commodore Collins commanded China Force.
- 20-39 Further, the Admiralty's instructions noted that it was not possible to separate entirely the conduct of naval operations in the ABDA Area from those on the adjacent stations. Therefore, China Force was still regarded as a detachment of the Eastern Fleet. The instructions dictated that while Layton's responsibility for naval strategy and operations in the ABDA Area ceased with the formation of ABDA, very close cooperation between the C-in-C Eastern Fleet and ABDACOM would be essential.²⁴

²³ Gill, *Royal Australian Navy 1939–1942*, p. 518.

²⁴ Summary, The American–British–Dutch–Australian Area Command, NAA: B6121 52M.



Source: Gill, *Royal Australian Navy 1939–1942*, p. 526.

Map 8 Convoy routes in and out of the ABDA Area

- 20-40 By 24 February, Hart had left and Helfrich had assumed operational command of the ABDA naval organisation, but his tenure would only last a matter of days. Ongoing defeat at the hands of the seemingly relentless Japanese had seen Wavell dissolve his command and fly to Ceylon on 25 February.²⁵
- 20-41 Experience brought out the deficiencies in this complex system. In hindsight, Layton remarked:

Although the formation of the ABDA organisation produced a settled system in that area, it unfortunately did not put an end to the difficulties experienced. Chief among these was a great delay and congestion in the communication system. It was mainly due to this, and not to any laxity on the part of the ABDA authorities, that I found during this period it was almost impossible to get an up to date picture of the situation in the ABDA Area ... Our communication organisation for the Far East revolved around Singapore, and once we began to lose the full use of that, improvised channels became rapidly choked up, in spite of all the efforts to produce a fresh organisation. Messages from Java took anything up to 10 to 15 days before they found their way from Supreme Headquarters to the addressees in Colombo or vice versa and many never arrived at all.²⁶

²⁵ Gill, *Royal Australian Navy 1939–1942*, p. 602.

²⁶ Summary, The ABDA Area Command, NAA: B6121 52M.

20-42

Wavell, in his final despatch to the Combined Chiefs of Staff after ABDA had been dissolved, said:

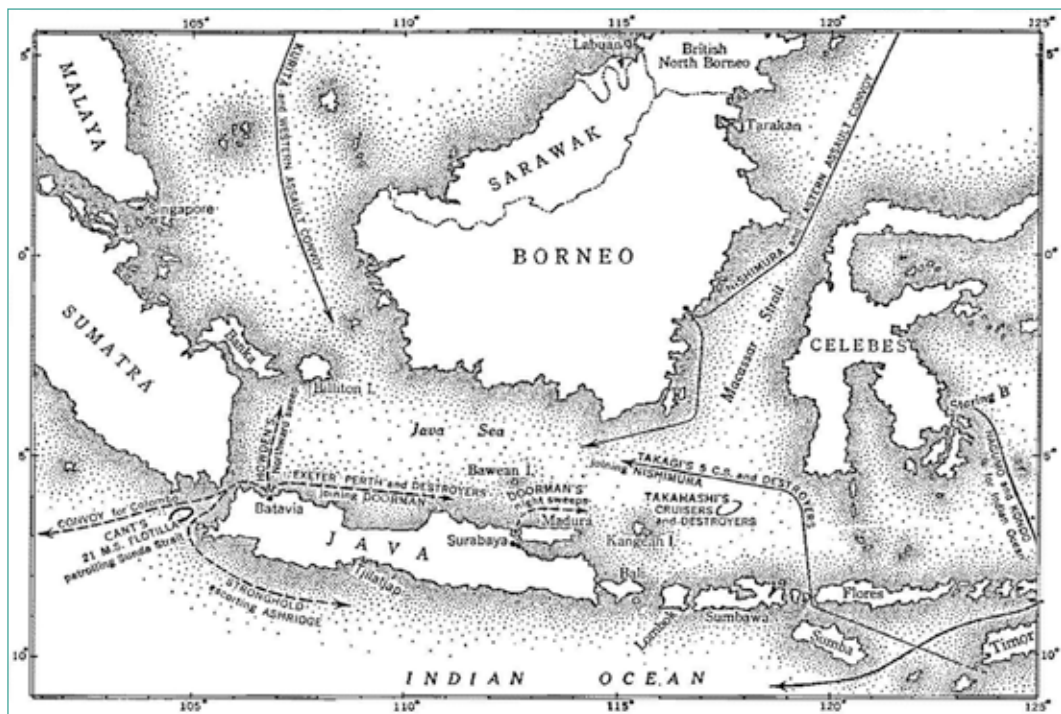
The main reason for our failure in the South-West Pacific is obvious. Our enemies moved too quickly on a simple effective plan and never gave us time to collect the forces necessary to remedy our initial weakness and to make headway against them. Air was the vital factor on both sides. Without air superiority, our Naval Forces, even had they been stronger, could have accomplished little, as the danger of operating warships within range of shore-based aircraft without fighter cover was shown on several occasions during the short campaign ...

The gallant attacks of the Dutch, British and American warships and aircraft against heavy odds and in most unfavourable conditions have certainly not been in vain.²⁷

20-43

On 26 February, the British Prime Minister, Winston Churchill, sent the following message to the commander of British air forces in Java, Air Vice-Marshal Paul Maltby:

I send you and all ranks of the British forces who have stayed behind in Java my best wishes for success and honour in the great fight that confronts you. Every day gained is precious, and I know that you will do everything humanly possible to prolong the battle.²⁸



Source: Gill, *Royal Australian Navy 1939-1942*, p. 603.

Map 9 Prelude to the Battle of the Java Sea

27 'Despatch by the Supreme Commander of the ABDA Area to the Combined Chiefs of Staff on the Operations in the South-West Pacific 15 January 1942 to 25 February 1942', NAA: A5954 1979/85.

28 Gill, *Royal Australian Navy 1939-1942*, p. 607.

Battle of the Java Sea

- 20-44 Intelligence had been received on 24 February of an enemy transport fleet carrying an invasion force and accompanied by strong naval escorting forces, which was proceeding south in the Makassar Strait (see Map 9). On 25 February Admiral Helfrich gave orders that the Eastern Striking Force, under the command of Rear Admiral Karel Doorman,²⁹ was to be reinforced by all available cruisers and destroyers then at Tanjong Priok.³⁰
- 20-45 On 26 February, *Perth*, which was to have been joined by HMAS *Hobart* (*Hobart* was unable to be refuelled because the auxiliary HMS *War Sirdar* had been damaged in a bombing raid), sailed to Surabaya and joined the Eastern Striking Force, which included the five cruisers (HNLMS *De Ruyter* six-inch, HNLMS *Java* six-inch, USS *Houston* eight-inch, HMS *Exeter* eight-inch, and HMAS *Perth* six-inch)³¹ and nine destroyers (US Ships *Alden*, *Edward*, *Ford* and *Paul Jones*; HM Ships *Electra*, *Encounter* and *Jupiter*; and HNLMS *Kortenaer* and *Witte de Witt*), to form the Combined Striking Force.
- 20-46 Further intelligence reports on 26 February confirmed the presence of large numbers of Japanese warships and transports in the east Java Sea, and also reports of a convoy of enemy transports off the north coast of Sumatra, which strengthened the belief that an invasion of Java was imminent.³² The remaining vessels of the Western Striking Force (commanded by Captain Harry Howden, RAN, in HMAS *Hobart*), consisting of three cruisers (*Hobart* and HM Ships *Dragon* and *Danae*) and two destroyers (HM Ships *Tenedos* and *Scout*), left Batavia under orders from Commodore Collins, and sailed at 2200 on 26 February to seek out and attack the Japanese Vice Admiral Kurita and his Western Assault Convoy.
- 20-47 There appears to have been little accurate intelligence about the operation planned by the Dutch to hold the Japanese on the line Makassar/Bali before the Combined Striking Force sailed to engage the Japanese. At 1700 on 26 February, a meeting of commanding officers of the ships of the Combined Striking Force (including Waller, who arrived very late and was unable to make any meaningful contribution) was held by Admiral Doorman. Captain Oliver Gordon, RN, of HMS *Exeter* explained:
- The instructions at this meeting were necessarily brief and consisted only in Rear Admiral Doorman's intentions regarding:
- a. Order of leaving [the] harbour;
 - b. Cruising formations and destroyer screening;
 - c. Patrol areas and movements to cover the area to best advantage, based on meagre information available of a large enemy convoy southwest of the Celebes and steering in a south westerly direction;

29 Jan Visser, 'Rear Admiral KWFM Doorman, RNN', Jan Visser, www.netherlandsnavy.nl/Men_doorman.htm, viewed 12 October 2012.

30 'Battle Summary no. 28: Battle of the Java Sea', Tactical, Torpedo and Staff Duties Division, Historical Section, Naval Staff, Admiralty, London, (TSD 764/44 — November 1944), p. 13.

31 Six-inch and eight-inch refers to the main armament of each ship.

32 'Battle Summary no. 28: Battle of the Java Sea', Tactical, Torpedo and Staff Duties Division, Historical Section, Naval Staff, Admiralty, London, (TSD 764/44 — November 1944), p. 14

- d. Method of attack if enemy forces, and in particular an enemy convoy, were met;
- e. Subsequent destination in the absence of other information —
 - If no enemy were sighted;
 - If action was joined and ships or units became separated;
- f. Night recognition signals.³³

20-48 The 14 ships of the Combined Striking Force left Surabaya at about 1830 on 26 February to engage the Japanese invasion force reported to be approaching Java from the north-east. However, no sightings were made during the night, and the Combined Striking Force re-entered Surabaya channel at 0855 the next morning. At 1330 on 27 February, an enemy report was received, and the Combined Striking Force again left Surabaya to intercept the Japanese. At approximately 1615, the engagement commenced against Vice Admiral Takagi and Eastern Assault Convoy, which was vastly superior in numbers, experience and skill.³⁴ By 1 March, the two Japanese assault convoys had landed troops at four points on the north coast of Java. No Dutch or other Allied intelligence reporting of those movements was available to either of the two Allied Striking Forces.

20-49 By 1740, HMS *Exeter* had suffered significant damage to her boilers, and was ordered by Admiral Doorman to break off, in company with the Dutch ship *Witte de Witt*, and proceed to Surabaya, which was reached early in the morning of 28 February. At about 2100 on 27 February, with the Combined Striking Force within about 50 miles north-west of Surabaya, the four US destroyers, being low on fuel and having no torpedoes, were also ordered by Doorman to break off and proceed to Surabaya to refuel.³⁵

20-50 By 2200 7 of the 14 ships of the Combined Striking Force had withdrawn, and 5 had been sunk, including *De Ruyter*, with the loss of Admiral Doorman. Waller, now in command, immediately decided to break off the engagement and withdraw with USS *Houston* (under the command of Captain Albert Rooks, USN) at high speed to Tanjung Priok.

20-51 Admiral Helfrich later criticised Waller's decision to withdraw, writing:

Strictly speaking the return of Perth and Houston was against my order 2055/26 — 'You must continue attacks till enemy is destroyed.' This signal was intended to make it quite clear that I wanted the Combined Striking Force to continue action whatever the cost, and till the bitter end. *Perth* did receive this signal. Both cruisers were undamaged ... and it was not right to say in

33 *Supplement to the London Gazette*, no. 38346, 6 July 1948, p. 3942.

34 Collins's report 'Battle of the Java Sea, 27 February 1942' mentions the enemy forces consisted of two eight-inch cruisers, two six-inch cruisers and 13 destroyers — *Supplement to the London Gazette*, no. 38346, 6 July 1948, p. 3937; whereas Gill, p. 606, writes that a group of 56 transports with its escort of 2 light cruisers and destroyers of the 3rd and 5th Flotillas and its covering group of 4 heavy cruisers of the 7th Squadron were descending upon western Java on 25 February; while moving down on central and eastern Java were 41 transports, covered and escorted by 2 heavy cruisers, 2 light cruisers and 14 destroyers; and away to the east were 2 more heavy cruisers and 2 destroyers.

35 This action was commented on by Helfrich in the Dutch report 'It is not certain whether the US destroyers were ordered to return to Surabaya. Though all their torpedos were fired, they could have been used as A/S (anti-submarine) ships. It is possible that shortage of fuel was the main motive', reported in 'Battle Summary no. 28, Battle of the Java Sea', Tactical, Torpedo and Staff Duties Division, Historical Section, Naval Staff, Admiralty, London, (TSD 764/44 – November 1944).

anticipation 'It is no use to continue action', considering the damage inflicted upon the enemy cruisers, which in my opinion must have been severe.³⁶

- 20-52 In the opinion of the official Navy historian, George Hermon Gill, and that of other experienced naval commanders, Waller's decision that *Perth* and *Houston* should withdraw was 'absolutely correct'. In Gill's judgement:

Had none but military considerations governed the use of the Allied naval forces in the Java Campaign, the time for their disengagement and withdrawal was reached long before 27 February 1942.³⁷

- 20-53 As recently as March 2010, the then Chief of Navy, Vice Admiral Russell Crane, AO, CSC, RAN, said of Waller's decision to withdraw:

This action though criticised at the time by Dutch Admiral Helfrich, who had ordered the fleet to fight to the last ship, is one of the most outstanding in Captain Waller's exceptional career, in my view. As has been pointed out by one of Captain Waller's biographers (Rear Admiral James Goldrick, RAN), there is a 'difference between gallantry and suicide'. The strength of moral character to recognise that difference and then to withdraw is worthy of the highest admiration.³⁸

HMAS *Perth* at Batavia

- 20-54 The Battle of the Java Sea having been lost, Waller reported to Commodore Collins at Tanjong Priok on 28 February 1942. A report, written by Waller on *Perth*'s arrival at Batavia and handed to Collins, explained that:

The Admiral's verbal instructions [as mentioned above] had been that any ship disabled must be left 'to the mercy of the enemy', to use his own words. I left DE RUYTER and JAVA, took HOUSTON under my orders, made a feint to the Southeast then turned direct to Batavia at high speed.

I now had under my orders one undamaged 6 in. cruiser, one 8 in. cruiser with very little ammunition and no guns aft. I had no destroyers. The force was subjected throughout the day and night operations to the most superbly organised air reconnaissance. I was opposed by six cruisers, one of them possibly sunk, and twelve destroyers. By means of their air reconnaissance they had already played cat and mouse with the main striking force and I saw no prospect of getting at the enemy ... It was fairly certain that the enemy had at least one submarine operating directly with him, and he had ample destroyers to interpose between the convoy and my approach — well advertised as I knew it would be.

I had therefore no hesitation in withdrawing what remained of the striking force and ordering them to the pre-arranged rendezvous after night action — Tanjong Priok.³⁹

36 The 'Dutch Account', compiled in Australia by Lieutenant Commander A Kroese, RNN, Captain of *Kortenaer* and quoted in Gill, *Royal Australian Navy 1939–1942*, p. 616.

37 Gill, *Royal Australian Navy 1939–1942*, p. 616.

38 Vice Admiral Russell Crane, 'CN speech, unveiling of the Hec Waller Memorial, 14 Mar 2010', Royal Australian Navy, 117.55.225.121/w/images/Unveiling_of_Hec_Waller_Memorial_14_Mar.pdf, viewed 24 October 2012.

39 *Supplement to the London Gazette*, no. 38346, 6 July 1948, pp. 3937–3941.



Source: Gill, *Royal Australian Navy 1939–1942*, p. 623.

Map 10 Situation — Java Area 28 February – 1 March 1942

Battle of the Sunda Strait

20-55 The Battle of the Java Sea created the circumstances for *Perth*'s final action in the Sunda Strait. After only partial replenishment was possible in Tanjong Priok, *Perth* and *Houston* (*Perth* only fuelled to 50 per cent, and with no ammunition for the six-inch main armament available) set out the same day with orders from Commodore Collins to sail through the Sunda Strait, between Sumatra and Java, to Tjilatjap on the south coast of Java (see Map 10). Before leaving port, Waller mentioned to Lieutenant Commander John Harper, RN, that it was likely that *Perth*'s next port of call after Tjilatjap would probably be either Fremantle or Colombo.⁴⁰ Waller, in line with all the intelligence available to him, expected an unopposed passage — but on the night of 28 February, off Bantam Bay, *Perth* and *Houston* encountered the Japanese Western Assault Convoy, with a covering force of 12 destroyers, 2 light cruisers and 2 heavy cruisers.⁴¹

20-56 *Perth* had already been discovered by the Japanese, so any surprise Waller thought he had, was lost.⁴² The action began at 2310, and Waller was soon aware that he had encountered a large enemy force, elements of which were to the north, west and south of *Perth*.⁴³ There were 'targets everywhere'.⁴⁴ Waller did not

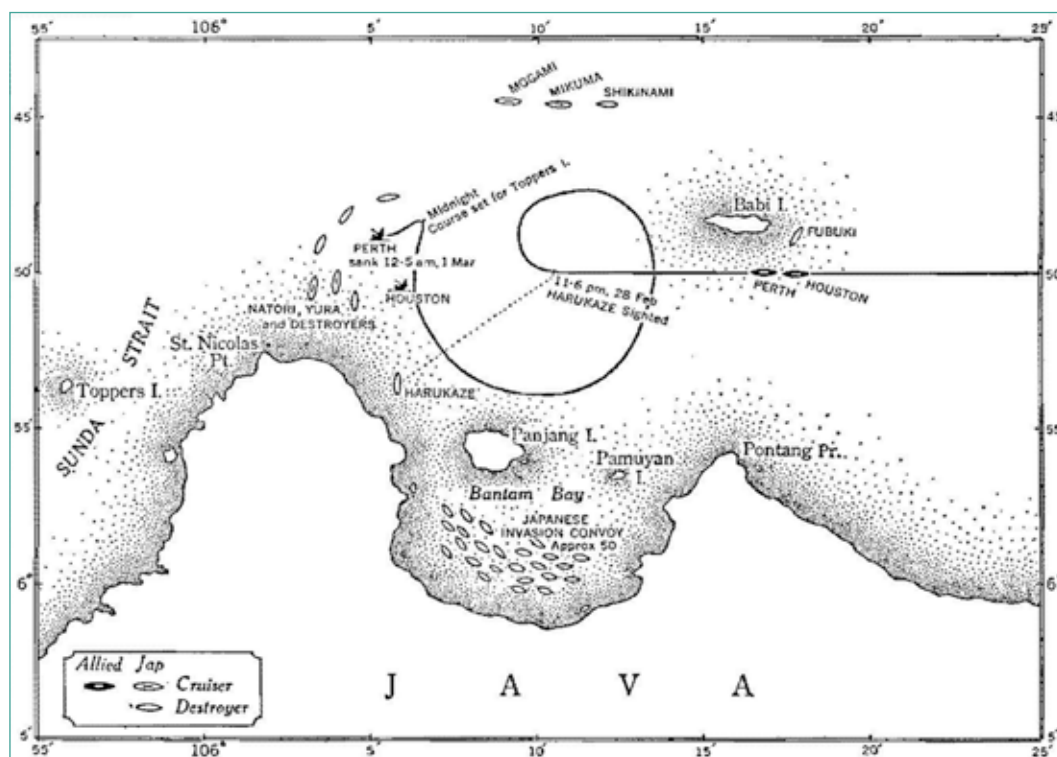
40 Lieutenant Commander J Harper, RN, 'Report of the final action and loss of HMAS *Perth*', 1 October 1945, NAA: MP1185/8, 1932/2/200.

41 Report from Lieutenant Commander J Harper, RN, to the Naval Board, 1 October 1945, NAA: MP1185/8, 1932/2/200.

42 Gill, *Royal Australian Navy 1939–1942*, p. 619.

43 According to an account written in conjunction with 10 survivors in a POW camp later in 1942 and signed by Lieutenant Commander John Thode, RANR(S), 2 September 1945, NAA: MP1185/9, 567/201/82.

44 Report by Lieutenant Commander Ralph Lowe, RAN, 5 September 1945, NAA: MP1185/9 567/201/82.



Source: Gill, *Royal Australian Navy 1939–1942*, p. 620.

Map 12 The Battle of the Sunda Strait

attempt to escape either into the Sunda Strait or back the way he had come (see Map 11). The action was fought at close range, sometimes as little as 2000 yards and not more than 5000 yards.⁴⁵ *Perth* was hit by gunfire for the first time at 2330. By midnight, short of ammunition, Waller decided to fight his way through and make for the strait, followed by *Houston*.

20-57 Within minutes, the first torpedo hit *Perth*. When the second torpedo hit five minutes later, Waller ordered 'Abandon ship'. A third torpedo then hit *Perth*, which sank at 0025 on 1 March. *Houston*, also hit by torpedoes and gunfire, sank at 0045. A Dutch destroyer *Evertsen*, trailing an hour behind *Perth* and *Houston*, was also caught by the Japanese and sunk.

20-58 According to one author, 'The Allies were responsible for sinking the headquarters ship *Sakura Maru*, the minesweeper *W-2*, and two more transports. In addition, a cruiser and four destroyers were damaged'.⁴⁶ However, the Japanese account of the engagement suggests that the damage done to the troop transports, including the sinking of the command ship, may have resulted from the overrun of torpedoes fired by Japanese destroyers at *Perth* and *Houston*.⁴⁷

⁴⁵ Reports on the loss of USS *Houston*, United States Naval Liaison Office, Calcutta, 1945, www.ibiblio.org/hyperwar/USN/ships/logs/CA/ca30.html#Encla11, viewed Nov 2011.

⁴⁶ Alan Payne, 'The Battle of Sunda Strait', *Naval History*, US Naval Institute, vol. 6, no. 1 (Spring) 1992, p. 34, provided to the Tribunal by Ms Pattie Wright in Submission 87A.

⁴⁷ War History Office of Japan's Ministry of Defense, Chapter 7 *Sea battle off Batavia*, from *Senshi Soshu*, vol. 26, published by Asagumo Shimbunsha, Japan 1969, translated in 2006 by Akio Oka, received as part of Submission 87A by Ms Pattie Wright.

- 20-59 It is unclear when Waller died — after *Perth* was first hit, or if he went down with the ship. In one account he was ‘reported to have been decapitated on the bridge by a shell splinter’⁴⁸ but other accounts have him remaining on the bridge, wearing a life-preserver, after ordering other officers to leave.⁴⁹ A third version has Waller last seen on the bridge looking down at the silent turrets.⁵⁰
- 20-60 On 31 January 1946 the Secretary of the Naval Board, Mr Alfred Nankervis, wrote to Mrs Waller, informing her that:
- The evidence indicates that your husband was last seen on the bridge when he was preparing to abandon ship. This is no evidence that he succeeded in abandoning ship and as direct hits are reported to have occurred to the vicinity of the bridge shortly afterwards it must be presumed that he was killed at that time.⁵¹
- 20-61 After the war, Admiral Cunningham wrote of Waller’s loss:
- Hector Macdonald Laws Waller will always remain in my mind as one of the very finest types of Australian naval officer. Full of good cheer, with a great sense of humour, undefeated and always burning to get at the enemy, he kept the old ships of his flotilla – the Stuart, Vampire, Vendetta, Voyager, Waterhen – hard at it always. Greatly loved and admired by everyone, his loss in HMAS *Perth* in the Java Sea was a heavy deprivation for the young navy of Australia.⁵²

Eyewitness accounts of *Perth*’s action

- 20-62 A report dated 1 October 1945 on the final action and loss of HMAS *Perth*, written by Lieutenant Commander John Harper, RN, contains narratives from himself and nine other survivors. Of the 218 men who returned to Australia, more than 20 have written or contributed separate personal stories to post-war accounts. Ten accounts were included in Ronald McKie’s book, *Proud echo*, in 1953. In 1960 a member of *Perth*’s ship’s company, Ray Parkin, wrote *Out of the smoke*, which included contributions from 15 survivors. The Tribunal heard directly from two of the survivors of *Perth* — Mr Frank McGovern and Mr Gavin Campbell — at a public hearing in Sydney in February 2012. There are also accounts given by the Japanese commanders who fought in the battle of Sunda Strait.⁵³

Fate of the ship’s company

- 20-63 As mentioned in paragraph 20-29, at the time of its sinking, *Perth*’s ship’s company totalled 681, comprising 671 naval personnel, 6 RAAF personnel (for operating and servicing the aircraft) and 4 civilians (canteen staff). However, 350 service personnel (including Waller) and 3 civilians did not survive the sinking.

48 As told in a narrative compiled from the reports of ten survivors and signed by Lieutenant J Thode, RANR(S), p. 4, NAA: MP1185/8, 1932/2/200.

49 M Carlton, *Cruiser, the life and loss of HMAS Perth and her crew*, William Heinemann, Sydney, 2010, p. 454.

50 R McKie, *Proud echo*, Angus and Robertson, Sydney, 1953, p. 47.

51 Letter, AR Nankervis, Secretary Naval Board, to Mrs N Waller, 31 January 1946, NAA: MP151/1, 429/204/540.

52 Cunningham, *A sailor’s odyssey*, p. 308 in Tom Lewis, *The submarine six*, Avonmore Books, Adelaide, 2012, p. 173.

53 Chapter 7, ‘Sea battle off Batavia’, from *Senshi Soshō*, vol. 26, published by Asagumo Shimbunsha 1969, translated in 2006 by Akio Oka, received as part of Submission 87A by Ms Pattie Wright.

- 20-64 Those who survived numbered 328 (324 naval, 3 RAAF and 1 civilian). Of these, 4 naval personnel died ashore without having been taken prisoner. A further 106 men died in captivity (105 naval, 1 RAAF). Four sailors were recovered from captivity in September 1944 when they were among prisoners of war rescued after the sinking of a Japanese transport. After the end of hostilities, 214 men (211 naval, 2 RAAF and 1 civilian) were repatriated to Australia.⁵⁴

A search for possible survivors in 1946

- 20-65 In July 1946 the Australian Commonwealth Naval Board (ACNB) sent a frigate, HMAS *Macquarie*, to Batavia to undertake a search of the islands around Java for survivors of *Perth*. This followed requests earlier in the year from two surviving officers from *Perth*, Commander Owen, RAN, and Lieutenant William Gay, RAN, urging the ACNB to do so. Commander Owen wrote:
- The circumstances are that many relatives of 'presumed dead' personal of HMAS *Perth* are still holding out hope for their husbands and sons. It is not clear whether a thorough search has been conducted for the missing in the southern tip of Sumatra, the islands of Sunda Strait and the extreme western end of Java.⁵⁵
- 20-66 The suggestion for a search was initially discussed informally, and, following approval for the search by the Australian Government, then discussed formally with the Supreme Allied Commander South East Asia (SACSEA) and the Commander Allied Forces Netherlands East Indies (AFNEI). Following receipt of agreement to the arrangements, HMAS *Macquarie*, under the command of Lieutenant Commander L Hinchliffe, RANR, was assigned by the ACNB to AFNEI. Also embarked in *Macquarie* were Lieutenant Gay, a War Crimes Investigation Team headed by Captain T Williams of the Duke of Wellington's Regiment, a medical officer, an interpreter and 30 Seaforth Highlanders commanded by Lieutenant I Gibbs, 1st Battalion Seaforth Highlanders.
- 20-67 The search was undertaken between 20 July and 20 August 1946, and entailed 53 landings on 37 islands, and 13 islands searched by binoculars.⁵⁶ No survivors were found.
- 20-68 In late August 1946, the families of those from *Perth* who had been presumed dead received a letter from the Secretary of the ACNB to advise that:
- The Naval Board ... detailed a ship of the Royal Australian Navy to make a further search of the islands and mainland in the vicinity of Sunda Strait where HMAS *Perth* was sunk. A special interrogation party and interpreter, as well as a surviving officer of HMAS *Perth* were attached to the vessel for the purpose of assisting in the investigations. The search has now

54 Royal Australian Navy, 'HMAS *Perth* (II)', Royal Australian Navy, www.navy.gov.au/hmas-perth-i, viewed 24 October 2012.

55 Letter, Commander Philip Owen, RAN(S), to Commanding Officer HMAS *Kuttabul*, 1 May 1946, NAA: MP1049/5, 1951/2/96.

56 General Summary, report by Lieutenant Commander L Hinchliffe, RANR, 28 August 1946, NAA: MP1049/5, 1951/2/96; and NAA: A1838/283, 401/3/3/4.

been completed and I regret to inform you the result has furnished no information which could give any hope that there are more survivors.⁵⁷

Fate of other Australian ships in the region

- 20-69 On 27 February 1942, Commodore Collins directed HMAS *Hobart* and the ships of the Western Striking Force to take a northward sweep. According to Gill, it was a token gesture, 'for it was obvious that a force which consisted of old and obsolete ships ... would stand little chance in an engagement'. The directions were that if the force failed to meet the enemy by 0430 on the 28th, it was to retire through the Sunda Strait to Ceylon, calling at Padang to embark refugees from Singapore and Sumatra. By 0600 on 1 March, no enemy having been sighted, *Hobart* entered the Sunda Strait and then sailed north-west for Padang.⁵⁸ After embarking 512 refugees, *Hobart*, in company with *Tenedos*, sailed for Colombo.⁵⁹
- 20-70 The fate of HMAS *Yarra* is discussed in detail in Chapter 21 of this report. What is not so well known is the fate of 21st Minesweeping Flotilla.
- 20-71 At about midnight on the night of 27–28 February 1942, *Wollongong* sailed from Tanjong Priok, as rear escort of a convoy of six ships, the main escorts of which were the sloops HMAS *Yarra* and HMIS *Jumna*. One of the vessels, the minesweeper HMS *Gemas*, turned back to Tanjong Priok, and had to be sunk on 2 March by *Ballarat* to prevent her capture.
- 20-72 Some four hours after the convoy sailed, the tanker HMS *War Sirdar* ran aground on a reef west of Tanjong Priok. *Wollongong* detached and stood by until daylight, when she made repeated but unsuccessful attempts to tow the tanker off the reef. The efforts were terminated by an enemy air attack and *Wollongong* set off to rejoin the convoy, after advising *War Sirdar* to abandon ship and land on a nearby island.
- 20-73 Further misfortune befell the convoy after dark on 28 February when the tanker SS *British Judge* was torpedoed south of Sunda Strait. However, she remained afloat and proceeded to Tjilatjap, some distance astern of the convoy at slow speed and escorted by *Wollongong*.
- 20-74 When the convoy arrived off Tjilatjap, Commodore Collins ordered *Jumna* to Colombo, and *Yarra* and the convoy to Fremantle. *British Judge* intercepted the signal to *Jumna* and passed it to *Wollongong*, which instructed *Jumna* to make for Colombo. *Wollongong* set course for Fremantle.⁶⁰
- 20-75 At daybreak on 28 February HMAS *Bendigo* sailed for Tjilatjap from Merak in company with her sister ships HMA Ships *Maryborough*, *Toowoomba*, *Ballarat*, *Goulburn* and *Burnie*. En route, HMAS *Bendigo* was detached with HMAS *Burnie* to pick up survivors of the Dutch ship *Boero*. The Fourth Engineer and 14 of the crew were rescued from the beach. In the afternoon of 1 March, HMAS *Bendigo*

57 Cited by Brendan Whiting, *Ship of courage: the epic story of HMAS Perth and her crew*, Allen & Unwin, Sydney, 2004, in Ian Pfennigwerth, *The Australian cruiser Perth 1939–1942*, Rosenberg Publishing, Sydney, 2007, pp. 233–234.

58 Gill, *Royal Australian Navy 1939–1942*, pp. 616–617.

59 *ibid.*, p. 626.

60 Royal Australian Navy, 'HMAS *Wollongong* (II)', Royal Australian Navy, www.navy.gov.au/hmas-wollongong-i, viewed 25 October 2012.

entered Tjilatjap Harbour. Shortly afterwards she was ordered to proceed to sea in company with HMAS *Burnie* to search for the Dutch ship *Sloterdijk*, which had been reported attacked by a Japanese submarine. Unable to locate the merchant ship, the minesweepers returned to harbour.

- 20-76 After fuelling and embarking 10 officers from Collins's staff, (along with one RAF officer, one civilian, 5 officers and 72 men from HMS *Jupiter*), HMAS *Bendigo* sailed for Fremantle, which it reached on 8 March.⁶¹ *Burnie*, with Commodore Collins on board, proceeded to Fremantle and also arrived there on 8 March 1942. The remainder of the Flotilla arrived in Fremantle on 9 and 10 March.

Chain of command for honours and awards

- 20-77 In line with the policy on honours and awards to those servicemen missing and made prisoners of war, consideration for recognition of the actions of Waller and *Perth*'s ship's company in 1942 (or of the survivors subsequently as prisoners of war) could not occur until very late into 1945. During the Java Sea action and before *Perth* was sunk, it was under British command (Commodore Collins), and the chain for consideration of honours was from Collins through Vice Admiral Layton to the Admiralty. At the end of the war, in 1945, practicalities directed that the ACNB undertake prime responsibility for the recommendation for any honours for *Perth*.

Honours and awards for the action — British

- 20-78 From September 1945, senior surviving officers from *Perth* submitted reports to the authorities in Australia detailing the last actions of *Perth* and the conditions the survivors experienced during captivity.⁶²
- 20-79 Once these reports were submitted between August and October 1945, a list was developed of survivors worthy of consideration for recognition. Included with the following list of officers and men submitted to the Admiralty on 9 November 1945 were the following words:

The Naval Board have examined the reports of senior surviving officers and strongly recommends to Their Lordships that the services of the following officers and men (in order of merit) should be recognised for gallantry and outstanding devotion to duty in HMAS *Perth*.⁶³

⁶¹ Gudmundur Helgason, 'HMAS *Bendigo* [J 187]', uboat.net, uboat.net/allies/warships/ship/3690.html, viewed 25 October 2012.

⁶² The senior surviving officers were Lieutenant Commander John Harper, RN; Lieutenant Commander Ralph Lowe, RAN; Lieutenant Commander John Thode, RAN; Lieutenant Surgeon Samuel Stening, RAN; Lieutenant William Gay, RAN; and Lieutenant Francis Gillam, RAN. Petty Officer J Willis also wrote of his experiences, the report of which was retained by Navy Office. In their reports, the officers wrote that they were able to complete their reports within about six months of the sinking of *Perth*, and then retain them throughout their time as prisoners of war. For example, Lieutenant Commander Thode's report was hidden in a concrete wall at the Cycle Camp at Batavia. While all the officers completed reports of the sinking and also detailed the subsequent conditions of survivors during captivity, of note are two of the reports of Lieutenant Commander Harper who completed two War Diaries for HMAS *Perth* for the period (a) 1 February to 1430 on 28 February; and (b) 1430 on 28 February to 0025 on 1 March, NAA: MP151/1, 429/204/478; NAA: MP1185/9, 567/201/82; NAA: MP1185/8, 1932/2/200; NAA: A7112, 2; NAA MP1049/5, 1968/2/634; NAA: B6121, 52T; AWM54, 505/10/10, Parts 1 & 2; and AWM78, 292/3.

⁶³ Letter, Secretary of the Naval Board to the Secretary of the Admiralty, 9 November 1945, NAA: MP1049/5/0, 1944/2/199; TNA: ADM1/30687.

Officers

Lieutenant Commander (N) John Harper, RN

Lieutenant Commander (S) Ralph Lowe, RAN(R)

(Temporary) Lieutenant (E) William Roberts, RAN

Lieutenant Lloyd Burgess, RANR (S)

Ratings

Stoker Petty Officer Jack McQuade

Petty Officer Horace Abbott

Chief Petty Officer Telegraphist Harry Knight

Electrical Artificer 1st Class Arthur Keiswetter

Engine Room Artificer 1st Class Joseph Hughes

Leading Cook (S) Thomas Larkin

Able Seaman Frederick Rawson

Stoker Valentine Savage

Yeoman of Signals Neil Biddell

Able Seaman Reginald Farrington

Stoker Frederick Parke

Able Seaman Thomas Mooney

In the same document, the ACNB brought to the notice of the Admiralty the meritorious service of the following officers and men from *Perth* for their 'skilful and devoted care of the wounded after the action':

Surgeon Lieutenant Commander Samuel Stening, RANVR

Sick Berth Petty Officer James Cunningham

Sick Berth Attendant Andrew Mitchell

Chief Petty Officer Cook (S) Robert Bland

Sick Berth Attendant Ernest Noble

Band Corporal John Coxhead

20-80 In an initial response to the 9 November 1945 letter, the ACNB received a cablegram from the Admiralty on 25 January 1946:

Your 058245 of 9 Nov 45. Is it your wish that Capt HML Waller DSO, RAN, formerly Commanding HMAS PERTH should be considered for posthumous Mention in Despatches if assumed dead.⁶⁴

⁶⁴ 'Message 251204' Jan 1945', NAA: MP1049/5/0, 1944/2/99.

- 20-81 The response from the ACNB on 29 January 1946 read:
- Your 251204 January. Notification of presumption of death of missing personnel from 'Perth' is being made on 1st February 1946. Would be glad of favourable consideration of posthumous Mention in Despatches for Captain HML Waller.⁶⁵
- The Tribunal noted that 25 January 1946 was a Friday and the period 26–28 January 1946 was a long weekend in Melbourne to celebrate Australia Day.
- 20-82 On 14 March 1946, a cablegram was received by the ACNB from the Admiralty advising that the King had approved awards for the last action of *Perth*. This approval included an MID (Posthumous) for Captain Waller. The awards were gazetted on 19 March 1946.⁶⁶
- 20-83 The Admiralty cablegram of 14 March also prompted the ACNB to submit further information about a recommendation for Lieutenant Michael Highton, RN, (raised with ACNB on 15 January 1946 with a copy to the Admiralty),⁶⁷ who was also killed during the action in which *Perth* was sunk. The ACNB responded on 9 April 1946 with details of a recommendation for Highton for 'gallantry and outstanding devotion to duty'. Highton received an MID (Posthumous), which was gazetted in September 1946.⁶⁸
- 20-84 On 18 March 1946 the Naval Board wrote to Mrs Waller, advising that the King had approved of her husband 'being posthumously Mentioned in Despatches for gallantry in the face of the enemy, and for setting an example of whole-hearted devotion to duty which upheld the high traditions of the Royal Australian Navy'.⁶⁹
- 20-85 British honours for gallantry during the last actions of their ships were made in January 1946 to over 40 officers and men of HM Ships *Exeter*, *Encounter* and *Electra*.⁷⁰ Further, in June 1946, Lieutenant Commander Norman Thew, commanding officer HMS *Jupiter*, received an MID 'for good services' while a prisoner of war in the Far East.⁷¹

Honours and awards for the action – Dutch awards

- 20-86 On 5 December 1947, the Netherlands Government expressed a wish to the Australian Government to honour Waller posthumously with the award of the Knight 4th Class of the Militaire Willems-Orde as Waller was under Dutch command at the time of the Battle of the Java Sea.⁷² The Australian Government declined the offer in February 1948 and gave the following as its reasons:

The proposal involves the recognition of services posthumously and, as the rules governing consideration of proposals for foreign awards precludes the acceptance of posthumous awards, the Prime Minister and the Acting

⁶⁵ 'Message 290103Z Jan 1946', NAA: MP1049/5/0, 1944/2/99.

⁶⁶ *Third Supplement to the London Gazette*, no. 37505, 19 March 1946, p. 1440.

⁶⁷ No record has been found of this 15 January 1946 correspondence.

⁶⁸ *Third Supplement to the London Gazette*, no. 37726, 13 September 1946, p. 4631.

⁶⁹ Letter, Secretary of the Naval Board to Mrs N Waller, 18 March 1946, NAA: MP151/1, 448/201/2005.

⁷⁰ *Fourth Supplement to the London Gazette*, no. 37440, 25 January 1946, pp. 579–580; and *Third Supplement to the London Gazette*, no. 37448, 25 January 1946, pp. 719–720.

⁷¹ *Fourth Supplement to the London Gazette*, no. 35792, 4 June 1946, p. 2682.

⁷² Note from the Royal Netherlands Legation to the Department of External Affairs, 5 December 1947, NAA: A1217 7/116.

Minister for Defence, whilst appreciating the offer of the Netherlands Government, regrets that he is unable to agree to the proposal.⁷³

20-87 There does not appear to be consistent Australian Government policy for service during the Second World War where, for example, posthumous foreign awards (US) were approved for the following RAN officers:

- Captain Emile Dechaineux, DSC, RAN — The US Government posthumously appointed Dechaineux an officer of the Legion of Merit (Posthumous) for his seamanship, professional skill, leadership and devotion to duty. This award was offered to the Australian Government on 11 July 1945 and accepted on 6 September 1945.⁷⁴
- Lieutenant Commander John Band, RANVR — Awarded the US Navy Cross (Posthumous) for 'extraordinary heroism in action against the enemy, as Officer in Charge of the Naval Beach Party that landed at Japanese occupied Finschhafen, New Guinea, on 22 September 1943.'⁷⁵

Both of these officers were under US operational command.

20-88 The following words from the British Foreign Office to the Netherlands Embassy in the United Kingdom in 1948 provides some explanation as to the RN practice, and hence the RAN practice, of the non-acceptance of posthumous foreign awards:

the reasons for our inability to agree to the posthumous award of Allied decorations to British subjects is since, generally speaking it is not possible for British decorations to be awarded in such fashion, the posthumous award of an Allied decoration as a fallen member of His Majesty's Forces for whom no British award had been found possible might well mislead his bereaved relatives into thinking that his sacrifice was more appreciated by the Allied country concerned than by his own. Our anxiety to avoid the creation of any such unfortunate impression compels me to express the hope that it may not be too late for your Government to find it possible to withhold the medals awarded ...⁷⁶

20-89 On 31 October 1946, an informal offer was made to the British Government from the Netherlands Government to bestow Dutch war decorations upon officers and men from British and Australian ships that took part in the Battle of the Java Sea, namely HM Ships *Exeter*, *Jupiter*, *Electra* and *Encounter*, and HMAS *Perth*. The offer included those who, in the opinion of their commanding officer at the time, would come into consideration for the award. The lists were to be provided in order of merit.

20-90 The offer was conveyed to Australian authorities on 31 December 1946. In conveying the offer, the Admiralty specifically asked that the authorities confirm that the nominees were alive, 'since it is not the practice to accept Allied awards posthumously'. On 13 August 1947 the following list of officers and men from *Perth*

73 Memorandum for The Secretary Department of External Affairs from The Secretary Prime Minister's Department, 27 January 1948, NAA: A1217 7/116; NAA: A1068/7 47/35/5/3; and Mr John Bradford, Submission 86.

74 Award of US decorations to Commodore JA Collins and Captain EFV Dechaineux (Deceased), NAA: A816, 66/301/146.

75 *Commonwealth of Australia Gazette*, 21 June 1945, p. 1352; and www.homeofheroes.com/members/02_NX/citations/03_wwii-nc/nc_06wwii_foreign.html, viewed 13 November 2012.

76 Letter, British Foreign Office to Netherlands Embassy, 19 October 1948, TNA: ADM 1/30768.

was submitted by the Secretary of the ACNB to the Australian High Commissioner in London:

- Officers
 - Lieutenant Lloyd Burgess, RANR (S)
 - Mr Cecil Vowles, Acting Commissioned Electrician, RAN
- Ratings
 - Able Seaman Frederick Rawson
 - Stoker Valentine Savage
 - Yeoman of Signals Neil Biddell
 - Able Seaman Reginald Farrington
 - Sick Berth Attendant Andrew Mitchell

- 20-91 The Cross of a Knight in the Order of the Orange-Nassau (Military Division) was conferred on the officers while the Bronze Medal in the same Order was conferred on the ratings. The awards were gazetted on 9 September 1948.⁷⁷ A total of 23 Dutch awards were conferred on the officers and men from HMAS *Perth* and HM Ships *Exeter*, *Jupiter*, *Electra* and *Encounter*.⁷⁸
- 20-92 In January 1943 Commodore John Collins, CB, RAN, was awarded the Order of Orange-Nassau (Commander) for his services in the Far East. He had earlier received an MID for gallantry and devotion to duty in Singapore.⁷⁹
- 20-93 The Netherlands Government also awarded its own Knight in the Military Order of William 3rd Class to Rear Admiral Doorman, posthumously.

Awards to others for action in February–March 1942

- 20-94 For his actions during the battle of the Java Sea, Captain Albert Rooks, USN, USS *Houston*, was posthumously awarded the US Congressional Medal of Honor. The citation (in part) reads:
- For extraordinary heroism, outstanding courage, gallantry in action and distinguished service in the line of his profession as Commanding Officer of the USS *Houston* during the period of 4 to February 27, 1942, while in action with superior Japanese enemy aerial and surface forces ...
- 20-95 The Netherlands Government also honoured Rooks with a posthumous award. On 10 January 1949 Captain F Stam of the Royal Netherlands Navy presented the Cross of the Bronze Lion to Mrs Rooks.⁸⁰

Other recognition for Waller

- 20-96 Captain Waller and HMAS *Perth* have both been honoured with several paintings. In 1942 a painting of HMAS *Perth* by Dennis Adams was completed in Sydney,

⁷⁷ *Commonwealth of Australia Gazette*, no. 133, 9 September 1948, NAA: A1217, 7/86.

⁷⁸ Dutch decorations awarded to British and Australian naval personnel for activities in the Battle of the Java Sea, TNA: ADM 1/30768.

⁷⁹ Officers [RAN] personal record — John Augustine Collins, NAA: A3978, COLLINS J A.

⁸⁰ Captain Albert H Rooks Papers, 1914–2005, University of Houston Libraries, archon.lib.uh.edu/index.php?p=collections/findingaid&id=461&q=&rootcontentid=117948#id117948, viewed 24 October 2012.

which shows the ship ploughing through the water.⁸¹ In 1964, Adams also completed a painting depicting HMAS *Perth* in the Battle of Sunda Strait. During 1942–1943, the Official War Artist Murray Griffin was imprisoned in Changi Prison, Singapore. Some of his fellow inmates were survivors of the sinking of HMAS *Perth*, and were sent to Changi as prisoners of war. The painting *HMAS Perth Fights to the Last, 28th February 1942* was created by Griffin based on the testimony of those survivors. In 1957, the Sydney artist Joshua Smith, a painter of predominantly traditional portraits, who won the Archibald Prize in 1944, painted a three-quarter length portrait of Captain Hector Waller in full uniform. The above four paintings are held by the Australian War Memorial.

- 20-97 In the Canberra suburb of Campbell, Waller Crescent, which leads into Waller Place, was gazetted on 24 May 1956 in honour of Captain Waller. In the suburb of Largs North, South Australia, Waller Circuit is set within a number of other streets named in honour of naval personalities, including Sheean Street, Collins Street, Rankin Crescent, Farncomb Court and Creswell Street. Waller Drive in Clare, South Australia, has also been named after Captain Waller. There is also a Waller Street in Shortland, near Newcastle, New South Wales.
- 20-98 In October 1963 at Elizabeth, South Australia, the Elizabeth and Salisbury Navy Club dedicated the Captain Waller Memorial Hall, originally part of the buildings for the Salisbury Returned & Services League. The Hall was opened by the widow of Captain Waller. A number of ex-*Perth* survivors were present as official guests at the opening and later held the inaugural Annual Waller Dinner on 27 February 1965. In 1970 the clubroom was doubled in size and the new area was rededicated by Mrs Waller. The area now also has the HMAS *Perth* Bar, which contains many relics from the *Perth*.
- 20-99 In 1961 the Waller Accommodation Block at HMAS *Cerberus* was named in Captain Waller's honour. The Waller Division at the RAN Recruit School was also previously named in Captain Waller's honour. More recently though, the Chief of Navy announced that Waller Division was to be renamed Shipp Division, in honour of Leading Aircrewman Noel Shipp, in November 2012.⁸²
- 20-100 On 17 July 1965, HMAS *Perth* (II) was commissioned. The motto for this ship, 'Fight and Flourish', is in memory of its predecessor. This ship was decommissioned in October 1999.⁸³ The third ship to carry the name of *Perth* was commissioned into the RAN on 26 August 2006.
- 20-101 On 10 July 1999 the third Collins-class submarine was commissioned and named in honour of Captain Hector Waller, DSO and Bar, RAN. The boat's motto, 'Tenacity', is in reference to Captain Waller's character. The crest for HMAS *Waller* includes a motif that consists of three parts. The field of black and blue signifies the night battles at sea during the Second World War, in which Captain Waller's Flotilla was engaged. The Stuart rose in the centre represents Captain Waller's distinguished service in HMAS *Stuart*. The oak leaves represent Captain Waller's

81 This picture was included in an exhibition by war artists that toured throughout the Commonwealth, including Perth in January 1944, 'War paintings come to Perth', *The Daily News*, 17 January 1944, p. 7.

82 Signal, '180730Z Sep 12', Renaming of RAN Recruit School Divisions — Waller and Rankin, 18 September 2012.

83 Ian Pfennigwerth, *The Australian cruiser Perth 1939–1942*, Rosenberg, Kenthurst NSW, 2007, p. 234.

three MIDs received during his career.⁸⁴ The day of the commissioning of HMAS *Waller* coincided with the 60th anniversary of the commissioning of the light cruiser HMAS *Perth* (ex-HMS *Amphion*) at Portsmouth, England on 10 July 1939.

- 20-102 In 2005, the Australian War Memorial held an exhibition titled 'Fifty Australians'. The exhibition included a cross-section of Australians — leaders, heroes or even rogues — who saw war and its effects on the Australian community, given Australia's involvement in wars and conflicts became a backdrop to millions of lives and was part of the community's collective experience. Included in those fifty Australians were two naval personalities — Hec Waller and John Collins. The list also included several VC awardees, a war photographer, members of the Australian Army and Air Force, a nurse, war journalist and a war artist, and other personalities including Tilly Devine, Breaker Morant, Chips Rafferty, Banjo Paterson and Normie Rowe.
- 20-103 On 14 March 2010 a memorial to Waller was unveiled in the Benalla Botanical Gardens, as Benalla is Waller's birthplace. The memorial, which was sculptured by Louis Laumen, depicts the swirling water following the sinking ship with poppies and hats floating on the surface.⁸⁵ At the unveiling of the memorial, Chief of Navy, Vice Admiral Russell Crane, AO, CSC, RAN, said:
- The two themes which burn brightest in the Hec Waller story were his expert seamanship in furthering the missions asked of him, but even above that his devotion to the men under his command...
- I know from my own career as well as talking to other ships' captains past and present, that the responsibilities of command at sea are heavy. The leadership shown by Captain Waller, and the decisions he made, would have been with the deepest realisation of what it would mean for his crew.⁸⁶
- 20-104 The Benalla Costume and Pioneer Museum has several areas dedicated to the 'Sons of Benalla' (Waller is one; 'Weary' Dunlop is another). The Waller area of the museum contains his dress uniform and his medals. There is a Waller Street in Benalla West and Waller House at Benalla College. Waller's name is also commemorated on the Benalla Cenotaph.
- 20-105 The HMAS *Perth* Memorial Regatta is held annually by the Nedlands Yacht Club, Perth, Western Australia, in honour of Waller, HMAS *Perth* and her ship's company. The event includes a memorial service followed by a sailing regatta. In 2012 the 52nd HMAS *Perth* Memorial Regatta was held on the Swan River and was attended by survivors and their families.

84 Royal Australian Navy, 'HMAS *Waller*', Royal Australian Navy, www.navy.gov.au/hmas-waller, viewed 8 November 2012.

85 Benalla Costume and Pioneer Museum, 'Our famous sons', Benalla Costume and Pioneer Museum, home.vicnet.net.au/~benmus/ourfamoussons.php, viewed 22 October 2012.

86 Vice Admiral Russell Crane, 'CN speech, unveiling of the Hec Waller Memorial, 14 Mar 2010', Royal Australian Navy, 117.55.225.121/w/images/Unveiling_of_Hec_Waller_Memorial_14_Mar.pdf, viewed 24 October 2012.

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

Arguments put forward in submissions for the award

- 20-106 The claims put forward for the award of the VC to Captain Waller in submissions were:
- Waller displayed great courage and ability in commanding his ship (Submissions 33, 33A, 87, 87A, 165, 123 and Wright oral submission).
 - No VC for the Navy due to a convoluted bureaucracy rather than the quality of valour (Submissions 92 and 106).
 - The senior officers of the Navy did not have time, in the turmoil of war, to make the appropriate submissions to London (Submission 92).
 - Captain Albert Rooks, USN, received the US Congressional Medal of Honor so Waller should get a VC (Submission 86).

Arguments put forward in submissions against the award

- 20-107 Submissions against the award of a VC to Captain Waller provided the following counter views:
- Waller was doing his job. Many other Captains who also lost their ships did the same, and did not get a VC (Submissions 89, 124 and 125).
 - Waller disobeyed an order and misread the tactical situation (Submission 99).

Tribunal consideration of the process for consideration of honours for *Perth*

- 20-108 In considering the case for a possible VC for Australia or some other form of appropriate recognition for Captain Waller, the Tribunal first conducted a process review, as described in paragraph 8-44 of the Report.
- 20-109 As mentioned at paragraph 20-80, the senior surviving officers from *Perth* submitted their reports and statements to the ACNB in late 1945. The nomination for honours for *Perth* submitted by the ACNB in its report to the Admiralty in November 1945 only included nominations for honours to survivors. No names of those lost in the action were included in any recommendations for an honour. The ACNB gave no indication why it was considering awards three months before it was prepared to declare the presumption of death, or why none of those lost were considered. The ACNB's decision to agree to a recommendation for Waller for an honour seems to have been a 'knee-jerk' reaction to implied criticism from the Admiralty, rather than from considered deliberations of recognition for the action.
- 20-110 The Tribunal found that, having received the senior officer survivor reports, the ACNB considered the surviving members of *Perth* for honours in the normal manner. However, for those lost, the ACNB had the opportunity to review their actions and make further recommendations to the Admiralty after the presumption of death was promulgated on 31 January 1946. This was not done.

Only after prompting by the Admiralty regarding Highton did the ACNB take any action, and even then did not include any others in its consideration. The Tribunal saw this as a failure of procedure, unjustifiably discriminating against the other 351 members of *Perth's* complement who had not survived.

- 20-111 From the information found by the Tribunal, it would appear that Waller and Highton were the only non-survivors of *Perth* to be recognised. Both awards were as a result of the Admiralty prompting the ACNB to submit the recommendations, and did not result from the ACNB's consideration of the actions of those killed. No other consideration was given to those Australians killed in the Battle of the Sunda Strait, and no consideration at all was ever given to *Perth's* actions in the Battle of the Java Sea.
- 20-112 Commodore Collins, Commodore Commanding China Force, was posted to the position of Naval Officer-in-Charge Fremantle immediately on his return to Australia in March 1942. He completed his war diaries for the period January to early March and submitted these to the Admiralty, with the ACNB also receiving a copy. These war diaries included reports of activities in the Java area, and Waller's report, presented to Collins on 28 February at Tanjong Priok. However, Collins did not recommend anyone for an honour and there is no indication that the ACNB took account of these reports in its considerations of awards for *Perth* in late 1945.
- 20-113 Consequently, the Admiralty had no information upon which to consider honours regarding the actions of *Perth* in the Battles of the Java Sea and Sunda Strait.
- 20-114 The principal effect of these accumulated procedural failures was that the ACNB at no time gave consideration to whether Waller and *Perth*, in the circumstances they faced in the Battles of the Java Sea and Sunda Strait, performed beyond what was called for in the execution of their duty.

Tribunal review of the merits of the case

- 20-115 The Tribunal therefore, in line with the guidelines set out in paragraph 8-46 of the Report, concluded that it had to undertake a merits review. The Tribunal believes the ACNB did far less than was necessary to accord justice to Waller and *Perth's* ship's company.
- 20-116 In addition to the reports and other information available to the ACNB in 1945–1946, the Tribunal considered all of the information available, including documents that have become available since 1946 and listed in the sources section.
- 20-117 In considering whether there was a preferable outcome for recognition of the actions and service of Waller and *Perth's* ship's company during the Battles of the Java Sea and Sunda Strait, the Tribunal sought first to clarify the duties being borne by Waller. These duties were the result of the decisions taken through January and February 1942 by the Combined Chiefs of Staff in Washington, the Australian Government, the ACNB, Commodore Collins, Vice Admiral Helfrich and Rear Admiral Doorman. No other Australian commander or vessel bore such a complex set of duties; nor did any other Allied vessel involved in the Battle of the Java Sea. *Perth* stood alone as being assigned from the Anzac Area to ABDA at the very last moment. Between 29 January 1942 and *Perth's* sinking on 1 March 1942, Waller had assumed an extraordinary and complex set of duties imposed

by this group of 'Commanders'. The Combined Chiefs of Staff in Washington early in January had requested that *Perth* specifically (not any Australian cruiser) be dispatched to Wavell's ABDA Command immediately, saying that any delay was likely to endanger the security of Western Australia (coincidentally the home state of the Prime Minister).

- 20-118 The Chief of Naval Staff, Vice Admiral Sir Guy Royle, RN, initially resisted because he wanted HMAS *Canberra* to go into refit and for *Perth* to cover the Anzac Area. However, in late January, when the War Cabinet considered that request, Royle changed his advice to the government. He then recommended that *Perth* go to the ABDA Area as soon as possible. The War Cabinet approved this recommendation. As mentioned in paragraph 20-32, *Perth* departed Sydney on 31 January for Fremantle.
- 20-119 Within the week since *Perth* first left Fremantle, and Singapore's surrender (15 February 1942), there had been considerable turmoil across the whole ABDA Command among Allied forces that were now planning for the imminent occupation of Java by the Japanese:
- 19 February 1942 — the Japanese had occupied Bali despite attempts by the ABDA Eastern Striking Force under Rear Admiral Doorman to prevent it. There had also been Japanese landings on Timor and the first air raid on Darwin.
 - 20 February 1942 — Combined Chiefs of Staff in Washington instructed General Wavell that Java should be defended with the utmost resolution, indicating 'Every day gained is of importance'.⁸⁷ Separately, it was Wavell's judgement that the loss of Java would not count for much in the overall circumstances where successfully defending Burma and Australia was of far greater strategic importance.
 - 20-22 February 1942 — as the outcome of an exchange of cables among Churchill, Roosevelt and Curtin it was finally agreed that the Australian Imperial Force contingents returning from the Middle East would be diverted neither to Java nor Burma but be returned to Australia.
 - 25 February 1942 — the ABDA Command was dissolved.
- 20-120 A fuller statement about the ABDA Command that lasted for only six weeks and to which *Perth* had now been committed is in paragraphs 20-34 to 20-42.
- 20-121 After the dissolution of ABDA, all British and Australian ships in the ABDA Area came under the command of Commodore Collins, RAN, but were, in addition, for specific operational purposes, at the direction of the senior Dutch naval officer, Vice Admiral Helfrich. With respect to Java, the remaining Allied naval forces were divided into two on 26 February 1942, with an Eastern Striking Force under Dutch command operating out of Surabaya and a Western Striking Force under Collins's command at Batavia.
- 20-122 It had been Admiral Helfrich's desire from the very time of the entry of the Japanese into the Pacific war for all Allied naval forces to attack the Japanese Fleet as far north as possible to protect the Netherlands East Indies colonies. Such a strategy had not been endorsed by the Combined Chiefs of Staff in

⁸⁷ Gill, *Royal Australian Navy 1939-1942*, p. 597

Washington. Now, some two months later, just as the invasion of Java was imminent (and the ABDA Command dissolved) Helfrich directed that all of the capable cruisers and destroyers of the two Striking Forces be assigned to the new Combined Striking Force under Rear Admiral Doorman, and should attack the forward Japanese elements (then within a very short distance of Java). The only Western Striking Force ships not included were the British cruisers *Danae* and *Dragon* and the destroyers *Tenedos* and *Scout*, all seen as being obsolete.

- 20-123 *Perth* survived air raids on the port of Tanjong Priok on 24 and 25 February 1942. On arrival, Waller reported to Collins, who ordered him to join Doorman's Combined Striking Force in Surabaya as soon as possible. *Perth* was able to refuel on the evening of 24 February⁸⁸ and sailed for Surabaya on the afternoon of 25 February. *Perth* was to have been joined by HMAS *Hobart* but *Hobart* was unable to be refuelled in time.
- 20-124 Before the arrival of *Perth* and other elements of the Western Striking Force, Rear Admiral Doorman had conducted a limited one-day reconnaissance to the north of Surabaya on 25–26 February, returning without having made any contacts.
- 20-125 On arrival in Surabaya, Waller and *Perth* were now under the command of Helfrich and Doorman (neither of whom had any periods of sustained naval combat experience). Put simply, Helfrich's orders were for the Combined Striking Force to fight to the last ship in trying to prevent the Japanese landing on Java. The strategic sense of Helfrich's orders has not been supported by any other Allied naval authority commenting at the time or since; but his orders were, however, consistent with the political directives from Churchill and through the Combined Chiefs of Staff in Washington (see Churchill's message of 26 February 1942 to Air Vice-Marshal Maltby in paragraph 20-43; and the Combined Chiefs of Staff message referred to in paragraph 20-119). The engagement in the Java Sea could be seen as of high political significance, but known by all Allied military leaders as a futile attempt to hold back the Japanese invasion.
- 20-126 When the Combined Striking Force left Surabaya at about 1830 on 26 February 1942, ship-to-ship communication was almost impossible. One hour after the first engagement with the Japanese covering fleet on 27 February, Doorman had disobeyed Helfrich's orders by ordering HMS *Exeter*, after it had suffered significant damage to its boilers, to return in company with the Dutch destroyer *Witte de Witt* to Surabaya. At 2100 Doorman ordered four of the US destroyers that had no torpedoes left and were low on fuel also to return to Surabaya. So by the time (around 2200) *De Ruyter* and four other ships of the 14-ship Combined Striking Force had been sunk and Doorman himself killed, there were only *Perth* and *Houston* still in contact with the Japanese Fleet. One other destroyer, HMS *Encounter*, had — as a result of the very rudimentary communications between ships — become detached from the Combined Striking Force early in the battle, and was now out of contact. At this point only *Perth* and *Houston* seem to have been in contact; Waller, now in command, decided to break off engagement with the Japanese and returned to Tanjong Priok at high speed. *Perth* itself was low on fuel and large calibre gun ammunition, as was *Houston*.

88 Pfennigwerth, *The Australian cruiser Perth 1939-1942*, p. 204.

- 20-127 As mentioned in paragraph 20-51, Helfrich's report on the Battle of the Java Sea, stated: 'strictly speaking the return of *Perth* and *Houston* was against my order 2055/26 — "you must continue attacks till enemy is destroyed". This signal was intended to make it quite clear that I wanted the Combined Striking Force to continue action whatever the cost and till the bitter end'.⁸⁹
- 20-128 Vice Admiral Helfrich clearly contemplated sacrificing all 14 ships, including *Perth*. The Vice Admiral makes no reference in his report, however, to the fact that by the time Waller had assumed command, nearly half of the Combined Striking Force had been ordered by Doorman to return to Surabaya. It would appear that while Helfrich did not criticise Doorman's decision to release 6 of the 14 ships of the Striking Force during the battle, he extended no such indulgence to Waller when he withdrew, having found himself with only *Houston* at the end of the battle.
- 20-129 By the time of Waller's return to Tanjong Priok on 28 February 1942, Helfrich, although still in command, was closing his office in Java, and, on 1 March, left by flying boat for Colombo. Waller reported in writing and in person to Collins in Tanjong Priok on the failure of the Battle of the Java Sea. Now back under Collins's command, Waller was ordered to sail *Perth* along with *Houston* and the Dutch destroyer *Evertsen* to Tjilatjap.
- 20-130 *Perth* and *Houston* left Tanjong Priok at about 1900 on 28 February 1942 (19 hours after *Hobart* had departed) but *Evertsen* did not have appropriate orders from the Dutch naval authorities nor had it raised steam, so it did not accompany them but departed about two hours later. *Perth* and *Houston* were both soon sunk after engaging the far superior Japanese force (a total of four heavy cruisers, one light cruiser and seven destroyers at Bantam Bay; plus six destroyers at Merak Bay, covering the large landing of troops at Bantam Bay)⁹⁰ off St Nicholas Point at the north-west tip of Java.
- 20-131 Waller's briefing from Collins before leaving Tanjong Priok included information that the Japanese Eastern Assault Convoy was at least 50 nautical miles to the north-east, and proceeding east. As a consequence, he had not expected to meet any Japanese ships between Tanjong Priok and the Sunda Strait, which he still expected was being patrolled at night by Australian corvettes. Neither *Perth* nor *Houston* had been able to fully refuel (*Perth* only to 50 per cent) and *Perth* was unable to re-arm with any 6-inch shells. As a consequence, *Perth* had expended all of its main armament ammunition soon after engaging with the Japanese off Point St Nicholas, and was left with no other option than to attempt to force its way through the Japanese Fleet to Sunda Strait.
- 20-132 By contrast, HMAS *Hobart* and the remaining ships of the Western Striking Force (also unable to refuel) were instructed by Collins to leave Tanjong Priok at approximately 0045 on 28 February 1942 and sail on a northern sweep, and, if no Japanese ships were sighted by 0430, to retire through the Sunda Strait to pick up survivors at Padang on Sumatra and then make for Colombo. This plan was devised by Collins to give the obsolete cruisers accompanying *Hobart* their best

89 The 'Dutch account' compiled in Australia by Lieutenant Commander A Kroese, RNN, Captain of *Kortenaer* and quoted in Gill, *Royal Australian Navy 1939–1942*, p. 616.

90 Chapter 7, 'Sea battle off Batavia', from *Senshi Soshō*, vol. 26, published by Asagumo Shimbunsha 1969, translated in 2006 by Akio Oka, received as part of Submission 87A by Ms Pattie Wright.

chance of survival. Captain Howden on *Hobart*, who had expected that a Japanese landing convoy might be in Bantam Bay, carried out his instructions to the letter. After sailing north and meeting no Japanese ships, he quickly retraced his course sailing through the Sunda Strait, overtaking on his way the convoy being escorted by HMAS *Yarra* to Tjilatjap, and hearing *Perth*'s enemy report at approximately 2340 as he sailed up the west coast of Sumatra 120 nautical miles south-east of Padang.

- 20-133 Collins had also resumed command of the British and American ships that had returned to Surabaya after the Battle of the Java Sea. Four American destroyers (*Alden*, *Edward*, *Ford* and *Paul Jones*), each with shallow draft, escaped by sailing east and south through the channel between Java and Bali. This channel was too shallow for the British cruiser *Exeter* and supporting destroyers HMS *Encounter* and USS *Pope*. Collins ordered them to sail north away from Java before turning west and the heading south through the Sunda Strait. Before they could execute this manoeuvre, *Exeter* and its accompanying destroyers were sunk by the Japanese Fleet on 1 March in the north Java Sea.
- 20-134 In reviewing the merits of the case, the Tribunal concluded that over the five-day period that *Perth* was in the Java area, Waller's first orders from Collins were to join the Combined Striking Force commanded by Rear Admiral Doorman. After Doorman had been killed, Waller took command of the remaining ships (*Perth* and *Houston*), took passage to Tanjung Priok and then reported to Collins. He was then ordered by Collins to proceed via Sunda Strait to Tjilatjap and refuel. In proceeding to Sunda Strait, he unexpectedly encountered the Japanese Western Assault Convoy and was sunk. Waller had no realistic option other than to engage the Japanese force. The Tribunal noted that while Waller had an extremely challenging command, he did not operate in complete isolation but, for the most part, was under the command of an Australian officer, Commodore Collins.
- 20-135 The Tribunal concluded that Waller commanded *Perth* with great skill, made the correct command decisions in extremely challenging situations, and operated for the majority of the time without sufficient fuel or ammunition.
- 20-136 With regard to the claim that Waller should have been awarded a VC because Captain Rooks of *Houston* received a US Congressional Medal of Honor in the same action, the Tribunal has previously concluded that comparable actions do not provide a precedent. Seeking to use as a precedent a decoration awarded by another country and under different criteria would be even more inappropriate. The Tribunal noted specifically that the citation to the Congressional Medal of Honor awarded to Captain Rooks referred not only to the Battles of the Java Sea and the Sunda Strait, but also to previous engagements on 4 and 15 February, and concluded by saying that (of the USS *Houston*), 'her officers and men having faced with greatest bravery more than three weeks of continuing and active danger without rest or let up'.⁹¹
- 20-137 The Tribunal also considered the duty imposed on Waller and *Perth* (see paragraph 20-117) against the particular requirements of the Letters Patent of the

91 US Navy Department Press Release, 'President awards Congressional Medal of Honor to USS *Houston*'s Commanding Officer', US Navy Department, Washington D.C, 24 June 1942, received as an attachment to Submission 87A.

VC for Australia that to be eligible, a person 'who in the presence of the enemy... displays extreme devotion to duty'. The Tribunal had in mind the traditional awarding of the VC in the First and Second World Wars, especially but not confined to the Navy, to recognise not only the valour of the commander but also of the men under his command. For example, the VC awarded to Lieutenant Commander SH Beattie, VC, RN, for his gallantry in the raid on the German naval base at St Nazaire in 1942 was 'not only of his own valour, but also of that of the unnamed officers and men of the very gallant ship's company, many of whom have not returned'.⁹²

- 20-138 On the records available to the Tribunal, the ACNB did not seem to have considered any of these matters that the Tribunal considers should have been uppermost in the minds of its members when it was considering what response it would give to the Admiralty's cable of 25 January 1946 questioning the inclusion of Waller. The Tribunal believes that it was open to the ACNB after 1 February 1946 (the date of the presumption of death for those of *Perth* who did not survive the sinking or the Japanese camps) to have done a proper reconsideration of what recognition (including the VC) should be recommended for Waller and all of *Perth's* ship's company. But the ACNB did no such review.
- 20-139 The offer from the Netherlands Government in 1947 to award Dutch honours to Waller and *Perth* provided another opportunity for reconsideration by Australian naval authorities of whether Waller and *Perth's* ship's company killed at the time of the sinking had received appropriate recognition. Again, no action was taken.
- 20-140 In all of these circumstances the Tribunal considers that it was open to the ACNB to have concluded at this point that the posthumous MID for Waller may not have been sufficient.
- 20-141 With regard to arguments against the award of a VC, the Tribunal considered the claims that Waller disobeyed an order and later fatally misread the tactical situation were not sustained by any evidence.

Tribunal conclusion

- 20-142 In summary, therefore, the Tribunal concluded that an injustice was done to Waller and to all non-surviving members of *Perth* by the way the ACNB approached matters of recognition in the period 1945–1947.
- 20-143 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

⁹² *London Gazette*, no. 35566, 21 May 1942, p. 2225.

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.

Tribunal recommendation

- 20-144 The Tribunal recommends that 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.
- 20-145 The Tribunal further recommends that the RAN continue the use of *Waller* and *Perth* as ships names in perpetuity.

CHAPTER TWENTY-ONE

HMAS YARRA

Background

21-1 HMAS *Yarra* was a 1060-ton Grimsby-class sloop in service with the RAN on commencement of the Second World War. On 4 March 1942, approximately 300 nautical miles south of Java, 3 of the 13 personnel named in the Inquiry Terms of Reference (Lieutenant Commander Rankin, Lieutenant Commander Smith and Acting Leading Seaman Taylor) were killed in action while serving in *Yarra*. All three had earlier served in *Yarra* during the evacuation of over 1,800 Allied troops from the transport *Empress of Asia*, which was attacked by Japanese aircraft off Singapore on 5 February 1942.



HMAS *Yarra*'s Ship's crest

21-2 Accordingly, the Tribunal decided to deal with the background information about *Yarra*'s service covering the above actions, the subsequent official handling of the loss of *Yarra*, and to examine any honours consideration by the RAN in respect of *Yarra*, in a consolidated report. The particular information about each of the three members of *Yarra*'s ship's company is included in discrete chapters that focus on the individual actions of Rankin, Smith and Taylor.

Submissions

21-3 The Tribunal received 29 written submissions and 11 oral submissions in relation to recognition for personnel serving in *Yarra*.

Written submissions

- a. Submission 8 — Mr Bernard Higgins (for recognition for Rankin)
- b. Submissions 45 and 45A — Commander Greg Swinden (for recognition for Taylor and *Yarra*)
- c. Submissions 54, 54A, 54B and 54C — Mr Garry Taylor and Ms Emilia Despotovski (for recognition for Taylor)
- d. Submission 86 — Mr John Bradford (for recognition for Rankin, Smith and Taylor)
- e. Submission 92 — Mr Michael Carlton (for recognition for Rankin and Taylor)
- f. Submission 99 — Mr Graham Wilson (against)
- g. Submission 101 — Mr Gary Woodman (for recognition for Rankin)
- h. Submission 106 — Dr Tom Lewis, OAM (for recognition for Rankin and Taylor)
- i. Submission 111 — Mr RE Popple (for recognition for Rankin and Taylor)

- j. Submissions 122 and 122A — Mr Clement Rankin (for recognition for Rankin)
- k. Submission 123 — Mr Peter Cooke-Russell, National Vice President of the Naval Association of Australia (for recognition for Rankin)
- l. Submission 124 — Mr Richard Pelvin (against)
- m. Submission 142 — Mr Graham Harris, National President of the Navy League of Australia (no stated position)
- n. Submission 163 — Ms Patricia Rankin (for recognition for Rankin)
- o. Submissions 167, 167A and 167B — Mr Peter Ingman (for recognition for Rankin)
- p. Submissions 172 and 172A — Mr Angus Walsh, OAM (for recognition for Rankin and Taylor)
- q. Submissions 185 and 185A — Mr Ralph Bull (for recognition for *Yarra*)
- r. Submission 197 — Ms Jennifer Witheriff (for recognition for Rankin)
- s. Submission 217 — Mr Peter Rankin (for recognition for Rankin)
- t. Submission 239 — Lieutenant Commander Rick Parry (for recognition for *Yarra*).

Oral submissions

- a. Mr Graham Wilson — Public Hearing Canberra, 1 December 2011 (against)
- b. Mr Richard Pelvin — Public Hearing Canberra, 2 December 2011 (against)
- c. Mr Peter Cooke-Russell — Public Hearing Canberra, 2 December 2011 (for recognition for Rankin)
- d. Mr Garry Taylor and Ms Emelia Despotovski — Public Hearing Melbourne, 15 December 2011 (for recognition for Taylor)
- e. Mr Clement Rankin and Mr Peter Rankin — Public Hearing Sydney, 8 February 2012 (for recognition for Rankin)
- f. Mr Michael Carlton — Public Hearing Sydney, 8 February 2012 (for recognition for Rankin)
- g. Mr John King — Public Hearing Sydney, 8 February 2012 (for recognition for Rankin)
- h. Mr Bernard Higgins — Public Hearing Sydney, 9 February 2012 (for recognition for Rankin)
- i. Commander Greg Swinden — Public Hearing Sydney, 9 February 2012 (for recognition for *Yarra*)
- j. Mr John Bradford — Public Hearing Adelaide, 14 February 2012 (for recognition for Rankin, Smith and Taylor)
- k. Mr Robert Rankin, Mr Peter Rankin, Mr Luke Rankin — Public Hearing Brisbane, 13 March 2012 (for recognition for Rankin).

History of HMAS *Yarra*

- 21-4 Commissioned in 1936, *Yarra* was a 1060-ton Grimsby-class sloop with a complement of 8 officers and 143 men. *Yarra* had a top speed of 16.5 knots and was armed with three 4-inch Mark V guns, two 20 mm guns, one quad .5-inch anti-aircraft gun and depth charges. *Yarra* and the other sloops in service with the RAN were versatile, small vessels that primarily served as convoy escorts, usually in an anti-aircraft or anti-submarine capacity.¹



HMAS *Yarra* (III)

(Photograph courtesy of the Australian War Memorial)

- 21-5 *Yarra*'s main armament of four-inch guns is shown in the image above, with Number One Gun being the closest to the bow, and Number Two Gun directly astern and forward of the bridge. Number Three Gun is shown astern of the after mast. These guns could be used as either anti-aircraft or anti-surface weapons.
- 21-6 On the outbreak of war in September 1939, *Yarra* was serving in Australian waters, mostly undertaking patrol and escort duties. On 28 August 1940, *Yarra* left Australia for what was to be an eventful 14 months of service in the Mediterranean and Middle East theatres. There, she served in the Red Sea, the Mediterranean and the Northern Arabian Sea; for the most part as a convoy escort, often coming under attack from German and Italian forces. *Yarra* also served with distinction in the Persian Gulf, undertaking operations in support of Allied troops in the short campaign against pro-German forces in Iraq, and in the equally short Persian campaign where, in part due to the gunnery skills of Acting Leading Seaman Taylor, she sank the sloop *Babr*.² During this service, *Yarra* was commanded by Commander Wilfred Hastings Harrington, RAN, who would later rise to the rank of Vice Admiral and serve from 1962 to 1965 as the Chief of Naval Staff and First Naval Member of the Australian Commonwealth Naval Board (ACNB).

¹ Tom Lewis, *The submarine six, Australian naval heroes*, Avonmore Books, Kent Town, SA, 2011, p. 121.

² AF Parry, *HMAS Yarra — the story of a gallant ship*, Angus and Robertson, Sydney, 1944, p. 4; and Royal Australian Navy (RAN), 'HMAS *Yarra* II', RAN, hmasyarra.org.au/yarra3.html, viewed 17 August 2012.

- 21-7 With the RAN's resources thinly stretched over the globe, the outbreak of war with Japan in December 1941 meant that *Yarra* was immediately required for duty closer to home. British naval forces already in the Pacific area had been quickly reorganised, with the creation of the Eastern Fleet through the amalgamation of the British East Indies and China Squadrons. On its formation in December 1941, Eastern Fleet was commanded by Vice Admiral Sir Geoffrey Layton, RN.

The American–British–Dutch–Australian Command

- 21-8 *Yarra* sailed from Alexandria on 16 December 1941, and, on 11 January 1942, the sloop reached Batavia (now Jakarta) on the island of Java, which was part of the Netherlands East Indies (now Indonesia). This resource-rich archipelago lay at the southern flank of the American–British–Dutch–Australian (ABDA) Area of operations, hurriedly set up on 15 January in an attempt to curb the rapid Japanese advance into South-East Asia (see Chapter 20 for more information about the ABDA organisation and operations).

The *Empress of Asia* action

- 21-9 On 3 February, *Yarra* joined an ABDA convoy, BM12, on its passage from Bombay in the Sunda Strait. The five heavily laden transports of BM12 carried matériel and about 5,000 troops for the reinforcement of Singapore. On 4 February, under the escort of *Danae*, *Yarra* and the Indian sloop *Sutlej*, the convoy came under air attack in the Banka Strait, but suffered no serious damage.³



The *Empress of Asia*, ablaze in Singapore Harbour

(Photograph courtesy of the Australian War Memorial)

- 21-10 However, on 5 February the convoy came under a heavier and more sustained attack. From Japan's entry into the war until that day, no convoy had entered Singapore during daylight hours. As the convoy approached in the forenoon, it was attacked by a large force of Japanese aircraft and subjected to intensive dive-bombing. The old transport *Empress of Asia*, crowded with troops, was set ablaze while moving at low speed into the anchorage. Despite the increased risk of aerial bombing, or of *Empress of Asia* exploding due to the already raging fires, Harrington took *Yarra* alongside and rescued 1,334 men, who managed to jump onto *Yarra*'s forecastle. Another 470 were rescued by *Yarra* from boats and floats.⁴
- 21-11 The Captain of *Sutlej* later reported that two other merchant ships, the *City of Canterbury* and *Felix Rousell*, were saved 'by the skilful handling and determined defence of their ships coupled with the effective gunfire of HMAS *Yarra*'.⁵

3 Gill, *Royal Australian Navy 1939–1942 Australia in the War of 1939–1945*, Australian War Memorial, Canberra, 1957, p. 528.

4 HMAS *Yarra* Report of Proceedings, 11 February 1942, AWM78, 374/1.

5 Columbo (sic) notes p. 52, NAA: B6121, 337.

- 21-12 In his Report of Proceedings following the action, Harrington chose to make specific comments about members of *Yarra*'s complement, including Smith, Rankin and Taylor:

No. 3 Gun shot down one aircraft in barrage fire. This came down 2,000x on starboard quarter. Two others are believed to have come down but I have been unable to obtain evidence which would enable me to report that they were destroyed. **Lieutenant-Commander Francis Edward Smith, RANVR** — the GOQ of 3 Gun, Able Seaman George Joseph Frederick Lloyd, ON 13097 — Captain of Gun — and Able Seamen John Roland Oliver, ON B2284 RANR and Geoffrey George Kimmins, ON 22898, the Layer and Trainer respectively are thought to have shown merit in bringing down this aircraft and it is submitted that consideration might be given to their receiving some recognition for their conduct ...

In the organisation of the embarkation I was much assisted by **Lieutenant Commander Robert William Rankin, RAN**, who had embarked in HMAS *Yarra* for passage prior to relieving me on return to Batavia...

Acting Leading Seaman Ronald Taylor, ON 20863, the Captain of Gun of No. 2 Gun, deserves commendation in that, on this occasion, as on many others, he controlled his Gun with judgement and determination. This rating's keenness and courage are a good example to all those in his vicinity.⁶

- 21-13 On 5 February, BM12 was the last convoy into Singapore.⁷ The island was invaded three days later and Singapore fell a week after that.

Yarra's service up to the time of her loss

- 21-14 On 6 February *Yarra* left Singapore bound for Batavia, and arrived on 11 February. Here, Harrington departed and Rankin assumed command. One of those who left with Harrington was Leading Seaman Arthur Parry, who two years later wrote the book *HMAS Yarra, the story of a gallant ship*, which detailed the sloop's war service.
- 21-15 For the next three weeks, *Yarra* was involved in further convoy duty, accompanying shipping around the ABDA Area. On 12 February *Yarra* sailed to Sumatra, and returned to Batavia on 16 February. The following day *Yarra* sailed to escort a convoy to a position 200 miles south of Christmas Island, and returned to Batavia on 24 February, where she was joined for a matter of hours by the cruiser HMAS *Perth*, under the command of Captain Hector Waller, RAN.⁸
- 21-16 By now, the Dutch Vice Admiral, Conrad Helfrich, had assumed operational command of the ABDA naval organisation, but his tenure would only last a matter of weeks. Ongoing defeat at the hands of the seemingly relentless Japanese had seen the ABDA Supreme Commander General Archibald Wavell dissolve his command and fly to Ceylon on 25 February.⁹ The Dutch were left in command of the remaining Allied sea, land and air forces, with Helfrich in command of naval operations. While still reporting to Helfrich, Commodore John Collins remained in command of the British China Force, to which *Yarra* was assigned. Collins would

⁶ HMAS *Yarra* Report of Proceedings, 11 February 1942, AWM78, 374/1.

⁷ Gill, *Royal Australian Navy 1939–1942*, p. 529.

⁸ *ibid.*, p. 576.

⁹ *ibid.*, p. 602.

later rise to the rank of Vice Admiral, and from 1948 to 1955 would serve as Chief of Naval Staff and First Naval Member of the ACNB.

- 21-17 By 27 February, while the Battle of the Java Sea was under way, Collins ordered all remaining British auxiliary craft to clear Batavia. A convoy comprising of the depot ship HMS *Anking*, the tankers *Francol*, *War Sirdar* and *British Judge*, and the minesweepers *Gemas* and *MMS51* sailed at about midnight for the port of Tjilatjap, on the south coast of Java, under the escort of *Yarra*, *Jumna*, and the corvette HMAS *Wollongong*.¹⁰ At the same time, Collins ordered HMAS *Hobart* and HM Ships *Tenedos* and *Scout* to make a sweep to the north of Batavia, and if by 0430 no contact had been made with the Japanese, immediately to turn south through the Sunda Strait and make for Colombo.
- 21-18 While the evacuation was taking place, most of the Allies' major surface combatants in the area, including *Perth*, were suffering a resounding defeat in the Battle of the Java Sea. Following this action, *Perth*, along with USS *Houston*, withdrew to Batavia and arrived in the afternoon of 28 February.
- 21-19 Earlier on 28 February, while enroute to Tjilatjap, *Yarra* was overtaken by *Hobart*, which had missed the Java Sea battle due to a shortage of fuel and, under orders from Collins, was making for Ceylon through the Sunda Strait.¹¹
- 21-20 Also on 28 February at 0800, *Wollongong's* sister ships of the 21st Minesweeping Flotilla — *Maryborough*, *Toowoomba*, *Ballarat*, *Bendigo*, *Goulburn* and *Burnie* — whose former base at Merak in the Sunda Straits was no longer tenable due to air attack, made for Tjilatjap to refuel under the orders of the commander of the Flotilla, Acting Commander Glen Cant, RAN.
- 21-21 At 1115 *Bendigo* and *Burnie* were detached to rescue people seen signalling on the beach at Java Head. There, they rescued survivors of the Dutch ship *Boero*, torpedoed by a Japanese submarine two days before. At midnight, when about due south of Batavia, Cant received orders from there to return to the Sunda Strait with four ships. These orders were later cancelled, but the cancellation was not received by Cant, who sent *Bendigo* and *Burnie* with their passengers to Tjilatjap and the remainder reversed course to return to the Sunda Strait.¹²
- 21-22 At 2340, *Hobart*, having safely transited Sunda Strait and now proceeding north along the west coast of Sumatra, received an enemy contact report sent from *Perth*, just north of the strait. Within the space of an hour, *Perth* would be lost (see Chapter 20).
- 21-23 On 1 March, the Japanese made four landings across the northern coast of Java. In view of the rapidly worsening situation, Helfrich completely dissolved the ABDA naval command, and subsequently flew to Colombo.¹³ In *Maryborough*, Cant intercepted a signal from the Dutch destroyer *Evertsen* warning that the Japanese were already in force in the Sunda Strait, and decided to again make for Tjilatjap.¹⁴

10 Gill, *Royal Australian Navy 1939–1942*, p. 617.

11 *ibid.*

12 Summary, Australian Mine Sweepers in Java, Records of George Hermon Gill, AWM69, 45/1.

13 Gill, *Royal Australian Navy 1939–1942*, p. 625.

14 Summary, Australian Mine Sweepers in Java, Records of George Hermon Gill, AWM69, 45/1.

- 21-24 Despite coming under further aerial attack, the *Yarra* convoy passed through the Sunda Strait and arrived off Tjilatjap on 2 March. The convoy arrived without *Gemas*, which, due to mechanical failure, had been forced to return to Tanjong Priok and was subsequently scuttled; *War Sirdar*, which had run aground on a reef and had to be abandoned; and *British Judge*, torpedoed by a Japanese submarine and only able to proceed at a much slower speed under the escort of *Wollongong*. On the convoy's approach, Collins, who had made an overnight journey by road from Batavia to Tjilatjap, ordered the convoy by signal not to enter the port, but instead to proceed to Fremantle, with the exception of *Jumna*, which was to return to Colombo.¹⁵ Later that afternoon, Collins himself sailed for Fremantle in the corvette HMAS *Burnie*. The other corvettes also left around that time, the last to depart being *Ballarat* in the early hours of 3 March.¹⁶ *Burnie* arrived in Fremantle on 8 March without incident and Collins assumed the role of Naval Officer-in-Charge at Fremantle on 9 March.
- 21-25 With *Jumna*'s departure, *Yarra* was now the sole escort of *Anking*, *Francol* and *MMS51* on the journey south. During the afternoon of 2 March, the convoy was shadowed by a Japanese aircraft. The following day, *Yarra* took onboard survivors from two lifeboats from the Dutch merchant ship *Parigi*, sunk by a Japanese submarine two days earlier. *Yarra* then continued her journey towards Fremantle, dropping two depth charges on a possible submarine contact that night.

The loss of HMAS *Yarra* and her convoy

- 21-26 By the evening of 3 March, the Japanese had numerous surface vessels deployed to the area, including a force consisting of the cruisers IJNS *Maya*, *Atago* and *Takao*, and the destroyers *Arashi* and *Nowaki* under the command of Vice Admiral Kondo Nobutake. In the previous three days, this force had already accounted for the destroyers USS *Pillsbury* and HMS *Stronghold*, and the USN gunboat *Asheville*.



The Japanese cruiser *Takao*

(Photograph courtesy of the Imperial War Museum)

¹⁵ Gill, *Royal Australian Navy 1939–1942*, p. 627.

¹⁶ *ibid.*, p. 628.

- 21-27 The morning of 4 March dawned bright and clear on the *Yarra* convoy.¹⁷ At 0630, approximately 300 nautical miles south of Java, the topmasts of Kondo's force were sighted, and after immediately making an enemy report by wireless, Rankin ordered the ships of the convoy to scatter, while *Yarra* took station between them and the Japanese and made smoke to screen the convoy while *Yarra* engaged the enemy.
- 21-28 *Yarra*'s main armament of three 4-inch guns were no match for the ten 8-inch guns of each cruiser and the six 5-inch guns of each destroyer, aided by spotting aircraft catapulted from the cruisers. One by one, the ships of the convoy were destroyed. *Anking* was sunk within minutes of the commencement of the action. *Yarra* was recorded as then being on fire, and with a heavy list to port, but still shooting. After being set alight by enemy fire, the crew of *MMS51* abandoned ship, and *Francol* was sunk at 0730.
- 21-29 Sometime after 0800, Rankin or his second-in-command, Lieutenant Commander Smith, gave the order to abandon ship. According to hearsay as repeated by Archibald, Taylor (the captain of the last remaining serviceable gun) disregarded the order to abandon ship and continued firing until he was killed and the gun silenced by the Japanese destroyers, which, along with bombs from the cruiser's aircraft, finally sunk *Yarra*.¹⁸
- 21-30 The final stage of the action was watched by survivors of *Stronghold*, now prisoners in the cruiser *Maya*. When the convoy was sighted they were sent below decks under guard, but later:
- We were taken on deck and shown, as they tried to impress us, the might of Japan's navy. The *Yarra* was the only ship left afloat, and we could see flames and a good deal of smoke. The two destroyers were circling *Yarra* which appeared stationary, and were pouring fire into her. She was still firing back as we could see odd gun flashes. The three cruisers then formed line ahead and steamed away from the scene. The last we saw of *Yarra* was a high column of smoke, but we were vividly impressed by her fight.¹⁹
- 21-31 According to a Japanese report of the action:
- In the early morning of the 4th March 1942 the following ships of No. 2 Fleet were cruising in the area Latitude South 12°15' Longitude East 110°10' — 'A' class cruisers *Atago*, *Takao* and *Maya*; No. 4 Destroyer Squadron *Arashi*, *Nowaki*. They sighted two enemy transport vessels under escort of two light naval vessels which were attacked by gunfire and sunk. None of the Japanese ships suffered any damage.²⁰
- 21-32 Some survivors from *Francol* and *Anking* were picked up by the Japanese, and later taken to prisoner of war camps. A total of 72 survivors from *Anking* and

¹⁷ The following account of *Yarra*'s final action is based on the first volume of the Official History of the RAN in the Second World War, *Royal Australian Navy 1939–1942*, written by the Naval Historian George Hermon Gill and published in 1957.

¹⁸ In an official statement of 28 May 1942, Ordinary Seaman Jack Archibald wrote that Able Seaman Oakes, a member of Number 2 Gun, told him before he died that Taylor would not leave his post on the gun and had refused to abandon ship saying he would fire the gun on his own (see Appendix 10).

¹⁹ Account of Able Seaman John F Murphy, Royal New Zealand Navy, quoted in Gill, *Royal Australian Navy 1939–1942*, p. 629.

²⁰ Japanese report quoted in Gill, *Royal Australian Navy 1939–1942*, pp. 629–630.

MMS51 fared better and were picked up by the Dutch steamers *Tawali* (bound for Colombo) and *Tjimanoeck* (bound for Fremantle).²¹

- 21-33 Of *Yarra's* total complement of 8 officers and 143 men, and, in addition, the 40 survivors from the *Parigi*, only 34 in total managed to escape by clinging to two rafts. Of these, all were *Yarra* men, with the exception of the Dutch captain of the *Parigi*. Their numbers were reduced over the following days by death from wounds and exposure. Of the 34, only 13 men survived to be rescued five days later by the Dutch submarine *K11*. They were taken to Colombo, where they spent two months recuperating from their ordeal. The senior surviving member of the ship's company was Stoker Petty Officer Victor Brazier, RAN.

After *Yarra's* sinking

- 21-34 On 11 March 1942, at a meeting of the Advisory War Council, Vice Admiral Sir Guy Royle, RN (who was the First Naval Member of the ACNB and Chief of Naval Staff), reported to the Prime Minister and other members of the Council that as nothing had been heard of either *Perth* or *Yarra*, they were to be presumed as lost.²²

- 21-35 That same day, the senior surviving officer of HMS *Anking*, Lieutenant MR Mathews, RN, wrote a report to Commander-in-Chief Eastern Fleet on the loss of his ship. In reference to *Yarra*, Mathews wrote:

At about 0600 three cruisers and two destroyers were sighted to the North-North-East. The cruisers opened fire at about 15,000 yards and splashes were observed around but not near to *Yarra*. *Yarra* took up station astern of the convoy and laid a smoke screen. Meanwhile the two destroyers had gone off to the left of the cruisers and were attacking the *Francol* and *MMS 51*. At about 0610, shells began falling near *Anking* and it became clear that we should soon have to abandon ship. The cruisers had closed to about 8000 yards and were concentrating their fire on *Anking* ... *Anking* was then hit several times and took a list to port. She sank at about 0630 ... After *Anking* had sunk the cruisers continued firing at *Yarra* for a short while. *Yarra* was on fire and had a heavy list to port, but was still firing when they made off to the north east ... The other destroyer stood by *Yarra* and when she did not sink opened fire at point blank range. *Francol* sank at about 0730 and *Yarra*, the last ship to sink at about 0830.²³

- 21-36 Also on 11 March, Collins, now in Fremantle, submitted the February War Diary for China Force directly to the Admiralty, with information copies to Layton and the ACNB. Under 5 February, Collins wrote:

Between 1000 and 1100 Convoy BM12 arrived at Singapore. As it was approaching the anchorage a large force of Japanese aircraft resembling Junkers 87B subjected it to persistent dive bombing for upwards of an hour.

Empress of Asia and *Felix Rousell* were hit and set afire. The latter was able to extinguish her fire but that in *Empress of Asia* spread rapidly so the ship had to be abandoned and was completely gutted. HMAS *Yarra* whose gunfire with

21 Gill, *Royal Australian Navy 1939–1942*, p. 631.

22 Minutes of 11 March 1942, AWM113, MH1/160 Part 1.

23 Columbo (sic) notes, pp. 52–53, NAA: B6121, 337.

that of the *Sutlej* saved other ships of the convoy from a similar fate. These incidents are more fully described in the ship's letters of proceedings.²⁴

- 21-37 On 13 March, following his arrival in Fremantle in *Tjimanoeck*, Lieutenant Francis Nixon of the Royal Naval Reserve (RNR) and the Commanding Officer of *MMS51* provided a report to Collins on the loss of his vessel. The report made very little mention of *Yarra*, only to say that after the enemy opened fire on the convoy, '*Yarra* immediately laid a smoke screen and the convoy attempted to scatter according to previous instructions'. This report, along with 18 other reports from ships and small craft that attempted to escape from Singapore and make for Sumatra or Java, was forwarded by Collins to Layton with copies to the Admiralty and the secretary of the ACNB. In his covering letter, Collins highlighted the services of 11 officers and men mentioned in the reports, suggesting that they may be deemed worthy of recognition. Honours were later awarded.²⁵ Collins included no names from *Yarra*.
- 21-38 On 19 March, Layton, by signal, advised the ACNB, Collins and other addressees that survivors of *Yarra* and *Anking* were in hospital in Colombo. The following day, Layton (who would be replaced by Admiral Sir James Somerville a week later), signalled the Admiralty and the ACNB with an account of the loss of *Yarra*, which was 'collated from stories of survivors'.²⁶
- 21-39 This account varied from what would later form the official history. It made no mention of *Yarra*'s preliminary engagement of the Japanese force. Instead, the account indicated that a Japanese force of 'three cruisers and four destroyers suddenly emerged and opened heavy fire scoring several hits'. The numbers of personnel who survived the action but subsequently died also varied from the official history. Further, the copy of the signal received in Australia indicated that the engagement took place just 30 miles south of Tjilatjap, rather than the actual position approximately 350 miles further south, as was written in Layton's version²⁷. This signal was marked for distribution to Royle and Commodore John Durnford (the Second Naval Member of the ACNB) and was marked as seen by the minister (probably the Minister of the Navy, Norman Makin, MP) on 23 March.²⁸
- 21-40 On 22 March, Mr George Macandie, Assistant Secretary of the Department of the Navy and Secretary of the ACNB, acting on behalf of the Secretary to the Department of the Navy, advised the Prime Minister's office that information had been received from naval sources that 13 ratings from *Yarra* had been rescued from a raft and were at a British port.²⁹

24 Letter, Naval Staff Office Fremantle 11 March 1942, TNA: ADM1/12190.

25 Minute, Naval Staff Office Fremantle 0/19/21, TNA: ADM199/357.

26 Signal 191215Z, NAA: MP151/1 429/205/2; Appendix II to East Indies War Records for March 1942, TNA: ADM/199/426.

27 This appears to have resulted from errors in transmission rather than a deliberate error.

28 Signal: 'HMAS YARRA — POs [Petty Officers] and men rescued', Commander in Chief Eastern Fleet 19 March 1942, NAA: MP151/1, 429/205/2.

29 'HMAS YARRA — POs [Petty Officers] and men rescued', Teleprinter message, 22 March 1942, NAA: MP151/1, 429/205/2.

- 21-41 On 24 March, Prime Minister Curtin issued a statement to the press regarding the loss of the *Yarra*. Curtin's statement read as follows:
- The stories of the 13 survivors of HMAS *Yarra* who were picked up from a raft and have been landed safely at a British port show that HMAS *Yarra* put up a gallant fight against overwhelming enemy forces in the highest tradition of the Australian Navy.
- In her efforts to defend a convoy under her charge HMAS *Yarra* established for herself and her ships company a place in naval history alongside ships such as HMAS (sic) *Jervis Bay* and others who have written epic stories that star our naval record.
- With a convoy of two merchant ships and a motor mine sweeper HMAS *Yarra* was attacked by three Japanese heavy cruisers and four destroyers thirty miles south of Tjilatjap on March 3 (sic). All the British ships, merchant and naval vessels, put up a gallant resistance and continued fighting until overwhelmed by the great superiority of the enemy in speed, numbers and gunfire.³⁰
- 21-42 Also on 24 March, Collins submitted the China Force War Diary for the period 1–9 March 1942 directly to the Admiralty, with copies to the Commander-in-Chief Eastern Fleet and the Secretary of the ACNB. *Yarra* was not mentioned, and very little information was submitted with regards to the movements of the ships under his command. Instead, Collins reported that 'all available information as to what happened to the various ships and vessels of the China Force under my command has been reported in separate communication'.³¹ By now, Collins was in receipt of the signal of 19 March from Colombo about the fate of *Yarra*³², and had received a report from Nixon about the fate of *MMS51*, which was forwarded to Layton and the Admiralty.
- 21-43 On 12 May 1942, as survivors began to return to Australia, the ACNB wrote to the District Naval Officer South Australia regarding ratings from *Yarra* who travelled to Port Adelaide on the MV *Katoomba*, requesting they be interviewed to confirm the names of personnel who died on the rafts. Four of these ratings (Brazier, Cairncross, Wagland and Latham) were interviewed and, on 15 May, advice was given as to who died.³³
- 21-44 On 20 May, Macandie, on behalf of the Secretary to the Department of the Navy, Alfred Nankervis, provided an account of the RAN in Malayan and Dutch East Indies waters to Makin (Minister of the Navy). The account lauded *Yarra*'s work in the *Empress of Asia* action, and, among other things, stated that 'the last fight of HMAS *Yarra* is comparable in gallantry to that of HMS *Jervis Bay*'.³⁴ The next day, Makin made a report to the House of Representatives.³⁵
- 21-45 On 27 May, the Secretary to the Department of Defence, Frederick Shedden, wrote to Nankervis, pointing out that the Minister for Defence (at that time, Prime Minister Curtin) had noted that a detailed review of operations had been released

30 Press statement no. 232, Canberra, March 24 1942, NAA: A5954, 518/14.

31 Minute O/19/21, 24 March 1942, NAA: MP1185, 2026/7/457.

32 Signal 191215Z, NAA: MP151/1, 429/205/2.

33 Minute 16/1/2, NAA: MP151/1, 429/201/427.

34 The Royal Australian Navy in Malayan and Dutch East Indies waters, NAA: MP 1049/5, 1953/2/5.

35 Frances McGuire, *The Royal Australian Navy: its origin, development and organization*, Oxford University Press, Melbourne, 1948, p. 224.

for publication by Makin on 21 May. At Curtin's direction, Shedden reminded Nankervis that important reports on operations were to be submitted to the War Cabinet in accordance with their January direction. Shedden asked for copies of the full reports of the various operations mentioned in the press statement for the information of the minister and filing in the War Cabinet records, and that the War Cabinet direction be followed from that point forward. In the absence of a response, this information was again requested on 30 June 1942.³⁶

- 21-46 On 2 September, a response was finally provided to Shedden on behalf of Nankervis. Shedden was advised that the information contained in the press statement was compiled by the Publicity Officer (George Hermon Gill, later to become the Official Navy Historian) from many sources, including survivors of ships operating in the Java Sea and war diaries. A copy of Commander Harrington's final Report of Proceedings covering the events of 1–10 February was attached to this last piece of correspondence.³⁷
- 21-47 As discussed in paragraph 4-62 of this Report, in September 1942 the Australian Government asked the Australian Defence Committee³⁸ 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 put to it by Vice Admiral Royle that Australia should continue to follow the Royal Navy system. The government did not press the matter. Earlier that year, Royle had issued Commonwealth Navy Order 43/42, which, among other things, instructed commanding officers that when making recommendations for honours and awards 'the nature of the award is not to be suggested'.³⁹ As discussed at paragraph 4-63 this was a variation on the RN procedure by which RN commanders, using Army Form 58, allowed for two categories: 'decoration' (nature of award not specified) and MID. Within the RAN there was no actual form (as was the case in the RN).
- 21-48 On 14 October, Curtin wrote to Makin, reiterating the War Cabinet's January direction and criticising the quality of the 2 September response. Curtin advised that neither he, nor the War Cabinet, had been furnished with a written report on, among other things, the loss of the cruisers *Canberra*, *Sydney* and *Perth*, the four destroyers *Waterhen*, *Vampire*, *Nestor* and *Voyager* and the two sloops *Yarra* and *Parramatta*.⁴⁰ The approach of naval authorities with respect to the investigation and reporting of the loss of these ships ranged from properly convened boards of inquiry to less formal reports submitted to the chain of command. The approach taken appears to have been based on the size of the ship, the immediately obvious circumstances surrounding its loss, the number of survivors, and the judgement of the commander at the time.
- 21-49 On 12 November 1942, almost six months after the original request from Shedden, Makin provided reports on the losses of the previously mentioned ships, together

36 Letter, Secretary to the Department of Defence, 30 June 1942, NAA: MP 1049/5, 1968/2/633.

37 Letter, Department of the Navy, 2 September 1942, NAA: MP 1049/5, 1968/2/633.

38 The committee consisted of the chiefs of the three services and the secretary of the Department of Defence.

39 Commonwealth Navy Order 43/42 [CN043/42], 17 February 1942, NAA: MP 1185/9, 448/201/3186. From an examination of Admiralty records it appears that before this date Commanders-in-Chief were permitted to recommend particular awards.

40 Letter, Minister for Defence, 14 October 1942, NAA: MP 1049/5, 1968/2/633.

with information on the Battles of the Coral Sea and Midway. These reports were provided to Makin by Royle, who in his rather brief covering letter specifically pointed out that there were no officer survivors from either *Parramatta* or *Yarra*.⁴¹ The Tribunal did note that two officers from *MMS51*, Lieutenant F Nixon, RNR, and Sub-Lieutenant FR Marshall of the Royal Malayan Naval Volunteer Reserve, were known to have arrived in Fremantle, and that Nixon had earlier in March made his report to Collins.

1943

21-50 A year later, in November 1943, Captain Harry Howden, RAN, who had commanded *Yarra* in 1938 and 1939, and had commanded *Hobart* during the ABDA period, wrote to the ACNB to draw the board's attention to the lack of recognition for personnel serving in the Java Sea. While the Navy Office copy of this letter has not been located (the file was not marked for retention),⁴² what appears to be a copy of this letter appears on Howden's Private Record in the Australian War Memorial.⁴³

21-51 Howden's correspondence did not explicitly refer to *Yarra*, but instead highlighted operations conducted in the search for Japanese invasion fleets. In his strongly worded letter to the ACNB, Howden wrote:

I refer to this matter only because that if it is left in its present state, future Historians (since there is, I assume, little reliable data for them to work upon) due to the fate that befell the Naval Forces in Java, may possibly infer that the work of those afloat was not creditable. I predict the question may arise in the minds of future Historians called upon to write the story and causes of the fall of Java, of the reasons why British personnel serving ashore were honoured by the Dutch Queen, while those afloat who met and fought the enemy in the South China and Java Seas, went unrecognised, alive and posthumously, by both the Dutch Queen, and by their own King ...

I wish to make it quite clear that communications of this nature are in no way looked for or expected, but that due to the unusual circumstances surrounding the operations preceding the investment of Java, when so few remain alive with any profound knowledge of affairs, I consider I would be failing in my duty if I did not represent the matter.

I consider it will indeed be unfortunate if the matter is permitted to remain in the present unsatisfactory state where it stands.⁴⁴

21-52 No response to this letter was found in Howden's papers.

1944

21-53 On 4 October 1944, members of *Yarra*'s ship's company previously regarded as missing (including Rankin, Smith and Taylor) were certified as presumed dead by the ACNB. Earlier that year, as well as Parry's work, another book, *The silent*

41 Letter, Minister for the Navy, 12 November 1942, NAA MP 1049/5, 1968/2/633.

42 Navy Office Ledger, NAA: Melbourne Book 448/201 entry 1553.

43 Records of Captain Harry Howden. AWM Private Record 86/145 Folder 7.

44 Letter CP 003/11/43, AWM Private Record 86/145, Folder 7.

service: action stories of the ANZAC Navy,⁴⁵ by Thomas Jones and Ion Idriess, appeared. This provided accounts of the loss of the *Yarra*. An extract from *The silent service*, together with a statement 'compiled from official papers', identical to the report provided to Curtin two years earlier, was used to inform the ACNB's decision about presumption of death.⁴⁶

- 21-54 In making this decision, the ACNB used as evidence an account from *The silent service*, which noted that one of the Japanese destroyers came within 100 yards of those on the rafts but moved off without picking anyone up. The ACNB then concluded that nobody was rescued except for the 13 picked up by *K11* and landed at Colombo. However, in view of the absence of definite information, in January 1945, the Admiralty decided to defer the presumption of death for RN personnel 'for the time being'.⁴⁷

After the war

- 21-55 In late 1945, survivors from HMS *Anking* and other ships in the convoy began to return from incarceration in Japanese prisoner of war camps and began to relate their experiences and accounts of the loss of the *Yarra*.
- 21-56 On 2 September 1945 an account of the loss of the *Yarra* and her convoy was sent directly to the ACNB by Lieutenant John Thode, RANR(S) ex-*Perth*, together with information regarding survivors from *Perth*. The account of the loss of *Yarra* said that it was based on reports collected by survivors of HMS *Anking* at Bandoeng in August 1942. Thode's report was sighted by various members of the ACNB over September and October.⁴⁸
- 21-57 In reference to *Yarra's* actions, Thode's report read:
- At 0630 March 4th, three single funnelled cruisers and two destroyers opened fire on the convoy. HMAS *Yarra* engaged the enemy and made smoke to cover the convoy, keeping between the convoy and the enemy ...
- The other destroyer had closed the range and was still firing at *Yarra* whose guns by this time [0720] were silent. Shortly afterwards HMAS *Yarra* sank, after a gallant fight. No boats or rafts were seen to get away.⁴⁹
- 21-58 Another report from two survivors was received by Navy Office on 17 October 1945, via the Captain of the (British) Eighth Submarine Flotilla, Captain Lancelot Shadwell, RN. The interviewing officer noted:
- Both [survivors interviewed] were insistent on two points —
- (1) The magnificent fight put up by *Yarra*. Mills said she was still firing her forward gun with the whole ship on fire and sinking. The gun was still in action when the stern was already under water.

45 Thomas Jones & Ion Idriess, *The silent service: action stories of the ANZAC Navy*, Angus and Robertson, Sydney, 1944.

46 Australian Commonwealth Naval Board Minute 73, 4 October 1944, NAA: MP151/1, 429/205/67.

47 Admiralty signal, 081643Z January 1945, NAA: 429/205/67.

48 Letter, Lieutenant John Thode to Australian Commonwealth Naval Board, 2 September 1945, NAA: B6121/3, 52T.

49 Letter, Lieutenant John Thode to Australian Commonwealth Naval Board, 2 September 1945, NAA: B6121/3, 52T.

- 21-59 The second point related to the good treatment accorded to the *Anking* survivors while in the Japanese destroyer. This report was sighted by the Second Naval Member, Commodore Henry Showers, RAN, on 20 October 1945.⁵⁰
- 21-60 On 7 November 1945, more reports were received in Navy Office from Admiral Wilfred Patterson, the Rear Admiral Commanding the Fifth Cruiser Squadron via Commander-in-Chief of the East Indies Station, Vice Admiral Sir Clement Moody, RN. The covering note did not explicitly mention which ships were the subject of the reports, but those now retained on the corresponding Navy Office file were those referring to *Wo Kwang*, *Stronghold*, *Yarra*, *Anking*, *Francol*, *MNS* (sic) *51*, *Rahman*, *Grasshopper* and *Siang Wo*. Patterson's letter said the reports had been received from Lieutenant Thew, RN, ex-HMS *Jupiter*⁵¹, the Senior Naval Officer at the Batavia prisoner of war camp. A copy was also sent directly to the Admiralty. The account dealing with the loss of the *Yarra* convoy was a copy of Thode's report.
- 21-61 On 16 November 1945, Captain Herbert Buchanan, RAN, Deputy Chief of Naval Staff, wrote on a minute paper, marked with a corresponding file number to the reports received on 7 November 1945:
- Has sufficient recognition been given to the gallant action of HMAS *Yarra*? On a smaller scale the incident is comparable with HMS *Jervis Bay*. DNI [Director Naval Intelligence, Acting Commander Rupert Long] please comment.⁵²
- 21-62 On 20 November 1945, a Department of the Navy minute paper marked with the same file number and titled 'Publicity Reference the loss of HMAS *Yarra*' was sent by the Naval Historical Records Officer to Long and Buchanan, it read:
- Naval information file 68H containing newspaper cuttings and also a book, issued by the Department of Information, is attached. The full story of *Yarra* was given in *H.M.A.S* and also in the book *The Silent Service* by Thomas Jones. The gallant action of the *Yarra* will be dealt with fully in the official naval history.⁵³
- 21-63 While the newspaper cuttings referred to in the minute above were not retained, a copy of the booklet *A proud page in our history*, which exclusively concerned the loss of *Perth* and *Yarra*, is held in Navy Office files now in the Melbourne collection of the National Archives. This book was published in 1944 by the Department of Information, on the authority of Minister of the Navy, Norman Makin.
- 21-64 The next entry on the covering minute to the 7 November bundle of reports, written on 24 November by the Second Naval Member, Commodore Henry Showers, read:
- I do not know of any recognition of the work done by HMAS *Yarra* either when rescuing survivors from HMT *Empress of Asia* or at her final action.

50 Captain Eighth Submarine Flotilla Minute 5944/280, NAA: MP1185/8.

51 Letter, 25 September 1945, Office of Rear Admiral Commanding Fifth Cruiser Squadron, NAA: 1932/2/214.

52 On 14 November 1945, a Department of the Navy minute paper titled 'Reports of losses of ships — 1942' marked with file 1932/2/214, was developed and passed through the Navy Office. This appears to have been used as a covering note to the reports received on 7 November 1945. The reports are retained on this file; however, the original copy of the covering minute is currently located in the HMAS *Yarra* box file in the RAN Sea Power Centre – Australia.

53 Minute 20 November 1945, HMAS *Yarra* box file, RAN Sea Power Centre – Australia.

- 21-65 The final entry, written on 28 November by the First Naval Member, Acting Admiral Sir Louis Hamilton, RN, read:
- I can only conclude that my predecessor examined this question fully in 1942.
- 21-66 Neither Hamilton, Showers nor Buchanan were assigned to Navy Office at the time of *Yarra*'s loss in 1942.
- 21-67 In April 1946, through the Minister for the Navy, a member of the public, Mr B Glover, requested that an inquiry be made into the loss of *Yarra* and the fate of missing personnel. Neither this correspondence, nor the response to Mr Glover, was marked for retention.⁵⁴
- 21-68 In 1975, Peter Firkins published *Of nautilus and eagles: history of the Royal Australian Navy*.⁵⁵ As well as providing a narrative of *Yarra*'s final action, attributed to Gill, Jones and Idriess, Firkins reproduced a comprehensive official statement provided by Ordinary Seaman Archibald on 28 May 1942. The Tribunal could not locate the file copy of this statement, despite conducting extensive searches of the National Archives of Australia, the Australian War Memorial, the United Kingdom's National Archives as well as consulting with the RAN Sea Power Centre – Australia and other sources. Firkins did not attribute the statement to any source. Neither Archibald nor Firkins are alive today.
- 21-69 The Tribunal accepted that Archibald's statement (at Appendix 10) as republished by Firkins in 1975 was likely to be an accurate account of Archibald's recollections in 1942.

Tribunal consideration of the awards process

The *Empress of Asia* action

- 21-70 The Tribunal conducted a review of the processes followed by the RAN in considering recognition of the actions of *Yarra* in accordance with the procedures set out in paragraph 8-44 of the Report.
- 21-71 In conducting this process review, the Tribunal was constrained by the availability of a limited amount of evidence, with the remainder being either lost, destroyed or never recorded.
- 21-72 The chain of command for honours for this action was for Harrington, as Commanding Officer of *Yarra*, to pass his recommendations to Collins as Commodore Commanding China Force. Under the arrangements of the time, they were required to be passed to Layton as Commander-in-Chief Eastern Fleet, and on to the Admiralty Honours and Awards Committee.
- 21-73 The Tribunal found, on the basis of markings on the file, that Harrington gave the action copy of this report to Collins or a member of Collins's staff while Harrington was in Batavia on 11 February 1942 and in the process of posting out of *Yarra*. What became of it after that time remains unknown. Despite extensive searches of the National Archives of Australia and the United Kingdom, the Australian War

⁵⁴ Navy office ledger book, NAA: Melbourne 429/205 entry 146.

⁵⁵ Peter Firkins, *Of nautilus and eagles: history of the Royal Australian Navy*, Hutchinson of Australia, Perth, 1975.

Memorial and the RAN Sea Power Centre – Australia, no evidence could be found to confirm that it was received by Layton.

- 21-74 It is possible that this report was lost or destroyed in the evacuation of Java, which took place around two weeks after the report was submitted by Harrington. Collins remarked in the February War Diary for China Force, submitted from Fremantle on 11 March, that he was of the view the Report of Proceedings had been forwarded to Layton. However, the Tribunal's research of the National Archives of the United Kingdom (including the available records of Layton and Somerville, which contained contemporary reports of proceedings from RAN and RN ships) did not locate a copy of this report.
- 21-75 While the action copy of the Report of Proceedings cannot be found, an information copy reached the Australian Navy Office. At some point in time, the Navy Office copy of Harrington's Report of Proceedings was marked in pencil with the file number 448/201/1320. This is significant because Navy Office files in the series 448/201 are concerned with honours and awards. However, this file does not contain any information about recommendations for honours and awards for *Yarra* crew members, nor do the corresponding Navy Office ledger book entries provide any record of Harrington's report.⁵⁶⁻⁵⁷
- 21-76 Further, the service records of two members mentioned by Harrington, Lieutenant Commander Smith and Able Seaman Oliver, were marked 'considered worthy of a Mention in Despatches for conduct while serving in HMAS *Yarra* 448/201/1320 of 2.4.42'. Able Seaman Kimmins's service record states that he was recommended for a Mention in Despatches (MID), and quotes the same file number as a reference. None were awarded an MID or any other medallic recognition. The service records of Rankin, Taylor and Lloyd contain no similar notation.
- 21-77 Due to the Navy Office copy of Harrington's Report of Proceedings being marked with an honours and awards file number and the notation of the service records of Smith, Kimmins and Oliver, it is possible that at some point, consideration was given by Navy Office staff, and possibly the ACNB, for honours for this action. However, the Tribunal found no evidence of the Navy Office taking any action on Harrington's recommendations, beyond the annotations to these service records. It is possible that Navy Office and the ACNB (since neither were in the chain of consideration for honours in this instance) expected consideration was being given by the Admiralty to Harrington's Report of Proceedings, and that when no honours were awarded, the Navy Office concluded that this was the result of a decision of the Admiralty Honours and Awards Committee. Alternatively, Harrington's report may have simply been forgotten until the matter was raised by Commodore Showers in 1945. Neither Harrington nor Collins, who later both became Chief of Naval Staff, ever saw fit to follow up the lack of recognition for the men that had been recommended.

56 Navy office ledger book, NAA: 448/201 Entry 1320.

57 Decorations for the Battle of Matapan, NAA: MP151/1, 448/201/1320.

The loss of *Yarra*

- 21-78 For honours to be awarded for *Yarra*'s final action, recommendations would have needed to have been made by a senior officer, based on the evidence of survivors of *Yarra* or other witnesses to the action. Had this process been initiated in 1942, these recommendations could have been made by Collins, who was *Yarra*'s Commodore Commanding at the time of her loss, and who was in receipt of evidence from survivors of other ships in *Yarra*'s convoy. Those recommendations could then have been forwarded through Layton to the Admiralty, as was the case with Nixon's report on the loss of *MMS51*. Alternatively, these recommendations could have been made by Layton after receiving the accounts of survivors on their arrival in Colombo, which took place on 19 March.
- 21-79 Despite extensive searches of the National Archives of Australia and of the United Kingdom, the Australian War Memorial and the RAN Sea Power Centre – Australia, the Tribunal found no evidence of Australian or British Naval authorities (i.e. Collins, Layton or the ACNB) taking any action to recommend any members of *Yarra*'s ship's company for an honour for their actions at the time of her loss.
- 21-80 The Tribunal noted that prior to submitting the China Force War Diary on 24 March 1942 (which did not mention *Yarra*), Collins had earlier received a report from Lieutenant Nixon, the Commanding Officer of *MMS51*, as well as reports from other ships that had evacuated Singapore and Java, and forwarded these reports to Layton, the Admiralty and the ACNB for further consideration. Through this process some honours were awarded. However, the Tribunal noted that Nixon's report dwelt heavily on the proceedings aboard his vessel while it was under heavy attack from the Japanese and made very little mention of *Yarra*.
- 21-81 On return of survivors to Australia, had Australian naval authorities decided to forward recommendations directly to the Admiralty, they certainly could have done so. For example, on 5 May 1942 (which was about the time the survivors were returning to Australia) recommendations for honours from *Hobart* when operating in South China and Java Seas were dealt with in that manner. File correspondence shows that Royle chose to send them directly to the Admiralty rather than sending them through Somerville (by then in command of the Eastern Fleet) via Collins. It was noted that *Hobart* was at that time no longer attached to the Eastern Fleet and that considerable delay would be involved if the recommendations were sent through Somerville.⁵⁸
- 21-82 In 1944, those named in Harrington's report who were missing after the action were declared to be presumed dead. This provided an occasion for the ACNB to address the issue of recognition for *Yarra*'s complement. The Tribunal found no evidence that it did.
- 21-83 Recommendations could have been made at the end of the war, which presented a final opportunity for naval authorities to recognise gallant or meritorious service that had not already been reported to the Admiralty. In this case, the recommendations could still have been made by Collins, although he was overseas for much of the latter part of 1945. In that case, these recommendations could have been made by the ACNB, who were in receipt of a growing amount of

⁵⁸ Note for file, NAA: MT1214/1, 448/201/1400.

evidence about gallantry in *Yarra* in her final action, and who had already received recommendations (albeit for information) for *Yarra*'s role in the *Empress of Asia* action.

- 21-84 The correct procedures were certainly observed by the Admiralty. The Tribunal found that in early 1946, as reports were coming to the Admiralty from the Far East regarding the losses of British ships in 1942, awards were made, including to officers and men from HM Ships *Stronghold* and *Grasshopper*. These reports were submitted directly to the Admiralty by Lieutenant Ian Forbes, RN, the senior surviving officer of both of these ships, without recourse to Collins.⁵⁹
- 21-85 The Admiralty awarded Temporary Sub-Lieutenant PW Smith of the Royal New Zealand Navy Volunteer Reserve a posthumous MID for his service on *Anking* when that vessel was lost in company with *Yarra*.⁶⁰ This honour was conferred in 1946, following representations in 1943 from the High Commissioner of New Zealand; the delay being due to the deferred presumption of Sub-Lieutenant Smith's death.
- 21-86 The Tribunal found no evidence of a Board of Inquiry being convened in regard to the loss of the *Yarra*, which, given the information that became available over time, may well have yielded some recommendations for honours. The covering minute of Royle's 1942 report to the minister explicitly highlighted that there were no surviving officers from *Yarra*. Although not common practice, a Board of Inquiry could have been convened by Layton, Collins or Royle during the war, or by Hamilton at the end of the war.
- 21-87 Clearly, more accounts did become available to Australian naval authorities over time, and by as early as 1942 a version of events that is closer to that recorded in the official history became available, and was eventually forwarded to government. Notwithstanding this, it appears that nobody in authority decided to put forward any recommendations for *Yarra* based on what was known, including at the end of the war in 1945 when even more evidence became available about *Yarra*'s final action.⁶¹
- 21-88 Admiral Hamilton's closure of the process in November 1945 (paragraph 21-65) appears to have ended any consideration by the ACNB of honours to deceased or living *Yarra* personnel for both the 5 February and 4 March 1942 actions, despite the cessation of hostilities and the opportunity to rectify the matter through the end of war list. The Tribunal found no evidence that any effort was made to contact Royle, Durnford or Collins to determine whether any consideration of recognition was given in 1942, or whether a decision was taken to defer recognition until the end of the war (in the hope that there might be some survivors from either *Yarra* or other ships in the convoy who could attest to their actions). Royle and Durnford had now returned to the UK, and Collins was also overseas on operations in command of the Australian squadron.⁶²
- 21-89 Hamilton appears to have been content with *Yarra* being recognised through an account in the official history, published in 1957, and the 1944 book, *A proud page in our history*, which has since been largely forgotten.

59 The relevant correspondence is retained in TNA: ADM1/30600.

60 *London Gazette*, no. 35705, 19 March 1946, p. 1440.

61 Minute paper, 14 November 1945, HMAS *Yarra* box file, RAN Sea Power Centre – Australia.

62 Gill, *Royal Australian Navy 1939–1942*, p. 681.

- 21-90 The Tribunal found that the continued inaction by Australian naval authorities in the case of *Yarra*, particularly the failure to take proper advantage of the end of war list procedures, amounted to maladministration.

Tribunal conclusion

- 21-91 In summary, with respect to the loss of the *Empress of Asia*, the Tribunal could find no evidence that the recommendations embedded in Harrington's report were considered by Layton and the Admiralty (the chain for honours). The Tribunal also found no evidence that the ACNB (in contrast to the action it took with respect to similar recommendations for *Hobart's* ship's company after Howden had submitted his recommendations) did anything to recognise the actions of *Yarra*. On the basis of Harrington's report, the Tribunal believes that, had the ACNB been proactive about the recommendations for the *Empress of Asia* action, the ACNB could have considered recommending — at least by the time of the end of war — Taylor for an MID for the *Empress of Asia* action.
- 21-92 With regard to the loss of *Yarra*, the Tribunal concluded that the ACNB did not afford procedural fairness to *Yarra's* complement, and that their continued inaction, particularly at the end of the war, amounted to maladministration. As a consequence, the Tribunal went on to conduct a merits review (at paragraph 8-46 of the Report).
- 21-93 The Tribunal completed a merits review of the individual claims for recognition for Rankin, Smith and Taylor (Chapters 22, 23 and 24, respectively), and concluded that there was not an adequate basis for recommending that individual Australian Defence honours be made to them. Consequently, the Tribunal deliberated at length on what would be fitting recognition for *Yarra* and its complement, in light of the failure of Collins, Layton, the Admiralty and the ACNB (at least by the time of the end of war list) to consider recognition of these officers and men.
- 21-94 After having received submissions and gathered evidence over the course of this Inquiry, the Tribunal formed the view that *Yarra's* case appears to be one of a very small number where extraordinary gallantry has been mishandled, to an extent that it would be unreasonable not to recommend some form of recognition to remedy the injustice.
- 21-95 Given all of the prevailing circumstances, the Tribunal considered that the injustice that occurred in the case of *Yarra* could only be corrected 70 years later by awarding an Australian Unit Citation for Gallantry.
- 21-96 In considering this recommendation, the Tribunal looked at not only the regulations establishing unit citations but also the current Defence policy, as set out in Chapter 9 of the *Defence honours and awards manual*.
- 21-97 Clause 9.13 of this policy states that nominations for unit citations are to be submitted and considered no later than three years after the end of the conflict. This part of the manual, along with a number of others, does not take into account the 2011 amendments to the *Defence Act 1903* (the Act), which established the Tribunal. Under the Inquiry provisions of the Act, the Tribunal is able to make recommendations about any form of medallic recognition for Australians in any military action, regardless of the passage of time.

Cognisant of its requirement to maintain the integrity of the Australian system of honours and awards in making its recommendation, the Tribunal also considered the three Unit Citations for Gallantry awarded since the inception of this honour. The citation for 1 Special Air Service Squadron reads:

Number 1 Special Air Service Squadron, for extraordinary gallantry in high-risk operations in Iraq from 19 March 2003 to 30 April 2003 in support of the denial of the threat of Iraqi weapons of mass destruction during Operation FALCONER.⁶³

During his speech to the squadron on 9 June 2004, the Governor-General, His Excellency Major General Michael Jeffery, AC, CVO, MC, remarked:

From the very first night of conflict in Iraq, 1 Squadron conducted complex, high-risk insertions into Iraq and rapidly came to dominate its area of operations. Its engagement in 13 major contacts within the first five days of the war, and another 16 over the next three weeks, sent a strong, clear message to the Iraqi leadership and military that they had lost control of the western desert.

It consistently outsmarted, outfought and, ultimately, overwhelmed its enemy. Among its most noteworthy achievements, the Squadron captured, secured and cleared the Al Asad Air Base — the largest and, arguably, most prized military facility in western Iraq.

It made a significant contribution to the comprehensive success of coalition forces in Iraq, and some of its individual members were highly decorated.⁶⁴

The citation for 4 RAR (Commando) reads:

4th Battalion, Royal Australian Regiment (Commando), for acts of extraordinary gallantry in action in Afghanistan, from 25 August 2005 to 2 September 2006, in support of security and stabilisation operations in Afghanistan and the International Coalition against Terrorism.

In his speech to the Battalion on 26 October 2007, the Governor-General, His Excellency Major General Michael Jeffery, AC, CVO, MC, remarked:

During the course of the operation, the Task Group fought a series of precarious battles and skirmishes against a resourceful enemy.

The Task Group was also able to successfully neutralise the enemy on a number of occasions in previously impenetrable sanctuary areas.

With clear, strategic combat duties, the Task Group quickly stamped their authority in the combat region despite being in the heartland of the Taliban and Anti Coalition Militia.

⁶³ Australian Government Department of the Prime Minister and Cabinet, 'Search Australian honours - simple search', PM&C, www.itsanhonour.gov.au/honours/honour_roll/search.cfm?show=simple, viewed 24 October 2012.

⁶⁴ Major General Michael Jeffery, 'Parade and Presentation of the Unit Citation for Gallantry to the 1 Squadron Group, Special Air Service Regiment' Governor-General of the Commonwealth of Australia, www.gg.gov.au/speech/parade-and-presentation-unit-citation-gallantry-1-squadron-group-special-air-service-regiment, viewed 5 November 2012.

During the 374-day deployment, the combat element spent 309 days in the field undertaking over 100 missions resulting in 139 combat engagements with the enemy ranging from small skirmishes to full scale battles.⁶⁵

and the citation for Delta Company 6 RAR reads:

Delta Company, 6 Battalion, Royal Australian Regiment, for extraordinary gallantry at the Battle of Long Tan in August 1966.⁶⁶

At her address to the remaining members of Delta Company, 6 RAR, on 18 August 2011, the Governor-General, Her Excellency Ms Quentin Bryce, AC, remarked:

The battle of Long Tan was played out in the most foreign of environments for D Company. Unrelenting tropical rain; a strange landscape of slender rubber trees providing scant camouflage; and an enemy force skilled in guerrilla warfare.

It is impossible for any of us here today to comprehend what inner strength you were all able to muster on that dreadful August day in 1966. How you were able to sustain such bravery, contain your fear, and ultimately prevail. There are many stories of individual courage, individual risk taking and impossible physical acts of endurance during the long siege. Today we are here to pay tribute to your collective resolve as a battalion. The audacity of believing that a handful of soldiers could halt a force of thousands is simply unimaginable. That you succeeded is even more astounding. I salute you on every level.⁶⁷

The Tribunal concluded that in light of the extraordinary gallantry, resolve and audacity shown by members on *Yarra's* ship's company during February and March 1942, the standing of the Australian honours and awards system would be strengthened by its use to remedy such a longstanding injustice.

- 21-99 In coming to its other recommendations, the Tribunal considered comments made on 31 May 2012 at a Public Hearing of this Inquiry by Vice Admiral Ray Griggs, the current Chief of Navy, in which he supported the use of naming ships to recognise gallant or meritorious service of former officers and sailors.

Tribunal recommendation

- 21-100 The Tribunal recommends that the Minister for Defence recommends:
- In recognition of the extraordinary gallantry of the ship's company of HMAS *Yarra* during February and March 1942, the Governor-General award a Unit Citation for Gallantry to HMAS *Yarra*, that is, to all of the complement who served in the *Empress of Asia* action and in its final action.
 - That *Yarra* and *Rankin* always remain the names of fighting ships in the Australian Fleet.

65 Major General Michael Jeffery, 'Presentation of the Unit Citation for Gallantry to 4RAR (Commando)', Governor-General of the Commonwealth of Australia, www.gg.gov.au/speech/presentation-unit-citation-gallantry-4rar-commando, viewed 24 October 2012.

66 www.itsanhonour.gov.au/honours/honour_roll/search.cfm?aus_award_id=1142515&search_type=simple&showInd=true viewed 24 October 2012. This Citation was the result of a recommendation by the Defence Honours and Awards Tribunal (the old tribunal) to the government and approved by the Governor-General.

67 Quentin Bryce, 'Unit Citation for Gallantry, 6 Battalion, Royal Australian Regiment', Governor-General of the Commonwealth of Australia, www.gg.gov.au/sites/default/files/media_files/s20110818956.pdf, viewed 5 November 2012

CHAPTER TWENTY-TWO

LIEUTENANT COMMANDER ROBERT WILLIAM RANKIN

22-1 Robert William Rankin was born in Cobar, New South Wales, on 3 June 1907. In 1921 he joined the RAN and entered the Naval College at HMAS *Creswell*. Rankin excelled in his studies, and in his final year was selected to be the Chief Cadet Captain — the senior cadet at the college.

22-2 After graduation, he served as a Midshipman in the cruisers HMA Ships *Brisbane* and *Melbourne* prior to further studies in the United Kingdom. As a junior officer, Rankin served in the cruiser *Canberra* and the survey ship *Moresby*, prior to proceeding on exchange with the RN. Rankin returned to Australia in late 1941, and was conducting hydrographic work near Sydney when Japan entered the war.

22-3 On 26 January 1942 he joined the sloop HMAS *Yarra*, with the intention that he assume command from Commander Wilfred Hastings Harrington, RAN.¹ Rankin was serving in *Yarra* when the sloop rescued over 1,800 troops from the liner *Empress of Asia* off Singapore on 5 February 1942, and was mentioned in Harrington's Report of Proceedings following this action (see paragraph 21-12). Rankin assumed command of *Yarra* on 10 February 1942, and was killed a matter of weeks later when the sloop was sunk on 4 March 1942. It is these two actions that are the subject of this Inquiry.

22-4 The actions of *Yarra*'s crew on both occasions are discussed in detail in Chapter 21.



Lieutenant Commander
Robert William Rankin
(Photograph courtesy of the
Australian War Memorial)

Recognition for service

22-5 For his naval service, Lieutenant Commander Rankin was entitled to the following awards:

- 1939–1945 Star
- Atlantic Star
- Africa Star
- Burma Star with Pacific Clasp
- War Medal 1939–1945
- Australia Service Medal 1939–1945.

¹ Service records, NAA: A3978, NAA: A6769 R W RANKIN.

What has led to the review?

- 22-6 Lobbying for recognition for those serving in *Yarra* began as early as March 1947, when an article was published in the *Sydney Morning Herald*.² Following publication of this article, the Ex-Naval Men's Association of Victoria made representations to the Minister for the Navy on the issue. Unfortunately, the contents of this correspondence are largely unknown due to the file not being marked for retention.³
- 22-7 Several other newspaper articles on the issue have appeared over time, often coinciding with the anniversary of *Yarra*'s loss. More recently, authors such as Dr Tom Lewis and Mr John Bradford have taken up the cause for recognition for Rankin in websites, articles and books.
- 22-8 In 2008, the Cobar Shire Council made representations to then Parliamentary Secretary for Defence, The Hon. Dr Mike Kelly, MP, seeking the referral of Rankin's case to the Tribunal. However, the Tribunal received no direction to inquire into the matter at that time.
- 22-9 The inclusion of Rankin formally commenced on 19 October 2010 during an estimates hearing of the Senate Standing Committee on Foreign Affairs, Defence and Trade, when a member of the committee, Senator Guy Barnett (Liberal, Tasmania), named Rankin among six candidates he put forward for consideration of the award of the Victoria Cross (VC).⁴ Consequently, Rankin's name was included by the Parliamentary Secretary for Defence, in the list directed in the Terms of Reference to this Inquiry. The family of Lieutenant Commander Rankin strongly support his consideration for the VC.

Submissions

- 22-10 The Tribunal has received 24 written submissions and 10 oral submissions in relation to Lieutenant Commander Rankin.

Written submissions

- a. Submission 8 — Mr Bernard Higgins (for)
- b. Submissions 45 and 45A — Commander Greg Swinden (for recognition for Taylor and *Yarra*)
- c. Submission 86 — Mr John Bradford (for)
- d. Submission 92 — Mr Michael Carlton (for)
- e. Submission 99 — Mr Graham Wilson (against)
- f. Submission 101 — Mr Gary Woodman (for)
- g. Submission 106 — Dr Tom Lewis, OAM (for)
- h. Submission 111 — Mr RE Popple (for)

² Column 8, *The Sydney Morning Herald*, 4 March 1947, p. 1.

³ Navy Office Ledger, NAA: Melbourne, book 429/205.

⁴ Senate Foreign Affairs, Defence and Trade Legislation Committee, Parliament of Australia, Supplementary budget estimates, 19 October 2010, pp. 106–109.

- i. Submissions 122 and 122A — Mr Clement Rankin (for)
- j. Submission 123 — Mr Peter Cooke-Russell, National Vice President of the Naval Association of Australia (for)
- k. Submission 124 — Mr Richard Pelvin (against)
- l. Submission 142 — Mr Graham Harris, National President of the Navy League of Australia (no stated position)
- m. Submission 163 — Ms Patricia Rankin (for)
- n. Submissions 167, 167A and 167B — Mr Peter Ingman (for)
- o. Submission 172 and 172A — Mr Angus Walsh OAM (for)
- p. Submissions 185 and 185A — Mr Ralph Bull (for recognition for *Yarra*)
- q. Submission 197 — Ms Jennifer Witheriff (for)
- r. Submission 217 — Mr Peter Rankin (for).

Oral submissions

- a. Mr Graham Wilson — Public Hearing Canberra, 1 December 2011 (against)
- b. Mr Richard Pelvin — Public Hearing Canberra, 2 December 2011 (against)
- c. Mr Peter Cooke-Russell — Public Hearing Canberra, 2 December 2011 (for)
- d. Mr Clement Rankin and Mr Peter Rankin — Public Hearing Sydney, 8 February 2012 (for)
- e. Mr Michael Carlton — Public Hearing Sydney, 9 February 2012 (for)
- f. Mr John King — Public Hearing Sydney, 9 February 2012 (for)
- g. Mr Bernard Higgins — Public Hearing Sydney, 9 February 2012 (for)
- h. Commander Greg Swinden — Public Hearing Sydney, 9 February 2012 (for)
- i. Mr John Bradford — Public Hearing Adelaide, 14 February 2012 (for)
- j. Mr Robert Rankin, Mr Peter Rankin, Mr Luke Rankin — Public Hearing Brisbane, 13 March 2012 (for).

The available evidence

Empress of Asia action

- 22-11 As discussed in Chapter 21, Commander Harrington brought Rankin's actions during the 5 February 1942 *Empress of Asia* action to the notice of his next in command, Commodore John Collins, RAN. This was in accordance with the contemporary process of initiating recommendations for honours. See paragraph 21-12 for details of Harrington's account of Rankin's actions of 5 February.
- 22-12 As discussed in Chapter 21, it is not known what action Collins took regarding Harrington's report. However, what is known is that a copy of this report was also forwarded for information to the Australian Commonwealth Naval Board (ACNB),

and that service records of some of those mentioned in the report were annotated (see paragraphs 21-73 to 21-77).

The loss of HMAS *Yarra*

22-13 As early as March 1942, Australian naval authorities had Commander Harrington's detailed Report of Proceedings covering the *Empress of Asia* action. But only a brief and (as time would prove) partially inaccurate account of *Yarra*'s final action was immediately available to them after *Yarra*'s loss (see paragraph 21-38). The passage of time brought further evidence to their attention.

22-14 This evidence included:

- the 11 March report made by Lieutenant MR Mathews, RN, the senior surviving officer HMS *Anking*, who arrived at Colombo in March 1942 (see paragraph 21-35; it is not known when this correspondence was received in Australia;⁵
- the 19 March signal from Commander-in-Chief Eastern Fleet, Vice Admiral Sir Geoffrey Layton, RN, to Collins and the ACNB, which gave a brief account of *Yarra*'s final action;⁶
- the report of Lieutenant FR Nixon, Royal Naval Reserve, of *MMS51*, submitted to Collins in March 1942 (see paragraph 21-37);⁷
- the May 1942 statement of Ordinary Seaman Jack Archibald (see Appendix 10);
- reports published in newspapers and broadcast in the media from March 1942 onwards;
- the report of 20 May from the Department of the Navy to Minister Makin, which Makin used to make a report to the House of Representatives (see paragraph 21-44);⁸
- the report provided to Prime Minister Curtin on 12 November 1942 by the Chief of Naval Staff and First Naval Member Vice Admiral Guy Royle, RN, as requested by the Minister for the Navy, The Hon. Norman Makin (see paragraphs 21-45 to 21-49);⁹
- Parry's *HMAS Yarra, the story of a gallant ship*,¹⁰ and Jones and Idriess's *The silent service: action stories of the ANZAC Navy*,¹¹ both published in 1944;
- *A proud page in our history* published by the Department of Information in 1944, reconstructing the story of the losses of *Perth* and *Yarra*;
- various reports from *Anking* survivors, brought to the attention of the ACNB in late 1945;¹²

5 Columbo [sic] notes, pp. 52-53, NAA: B6121, 337.

6 Signal 191215Z, NAA: MP151/1 429/205/2; Appendix III to East Indies War Records for March 1942, TNA: ADM1/12190.

7 Minute, Naval Staff Office Fremantle 0/19/21, TNA: ADM 199/357.

8 Report, 20 May 1942, NAA: MP1049/5, 1953/2/5.

9 Letter, Minister for the Navy, 12 November 1942, NAA: MP 1049/5, 1968/2/633.

10 AF Parry, *HMAS Yarra, the story of a gallant ship*, Angus and Robertson, Sydney, 1944.

11 Thomas Jones & Ion Idriess, *The silent service: action stories of the ANZAC Navy*, Angus and Robertson, Sydney, 1944.

12 Letter, Lieutenant Thode to Australian Commonwealth Naval Board, 2 September 1945, NAA: B6121/3 52T; 'Captain Eighth Submarine Flotilla Minute 5944/280', NAA: MP1185/8, 1932,2,214.

- a letter from Able Seaman John F Murphy, a prisoner aboard the IJNS *Maya*, provided to the Official Historian in November 1946;¹³ and
- Japanese responses to questions from Naval historical staff regarding the loss of the *Yarra*, which were provided in late 1947.¹⁴

Existing recognition for Rankin

- 22-15 In 2001 a Collins-class submarine was named in honour of Rankin. The boat's motto 'Defend the Weak' is in reference to *Yarra*'s last action.
- 22-16 Until recently, an accommodation block and a division in the RAN's Recruit School at HMAS *Cerberus* were also named in honour of Rankin. On 18 September 2012, following comments made at a public hearing of the Tribunal on 31 May 2012, the Chief of Navy, Vice Admiral Ray Griggs announced that Rankin Division would be known as Taylor Division from November 2012.
- 22-17 Rankin is celebrated as a 'Cobar legend' and is well remembered in his home town.¹⁵ In 2004, HMAS *Rankin* was given Freedom of Entry to the town.
- 22-18 Rankin's medals and sword are proudly displayed at the RAN College at HMAS *Creswell*.

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

Arguments put forward in submissions for the award

- 22-19 The arguments put forward for the award of the VC or other recognition for Rankin are as follows:
- The failure to have the bravery of Rankin and his men reviewed and recognised is an oversight that needs to be corrected, regardless of the passage of time (Submission 45). It is a case of manifest injustice. (Submission 86).
 - There are obvious parallels between the actions of Rankin and Fegen (Acting Captain Edward Fogarty Fegen, VC). Fegen received a VC, Rankin did not receive any honour. Even the prime minister made this comparison (Submissions 86, 92, 106, 111 and 123, and Robert Rankin oral submission Brisbane 13 March 2012).
 - Rankin could have elected to surrender his ship, but instead he turned towards the enemy in an attempt to delay them and, therefore, save the convoy. (Submission 106).
 - The actions of Rankin meet the criteria for the award of the VC and he deserves the highest award for gallantry (Submissions 92 and 106, and Robert Rankin oral submission Brisbane 13 March 2012). This view is held by

¹³ Letter, Mr John F Murphy, 9 November 1946, AWM 69, 45/1.

¹⁴ Letter, Officer Commanding the Australian Military History Section, British Commonwealth Occupation Forces, Japan, 16 December 1947, AWM 54, 423/4/82.

¹⁵ Submission 217 (Mr Peter Rankin), and oral submission by Mr Clement Rankin, Public Hearing Sydney, 8 February 2012.

survivors, historians and many naval personnel (Submissions 122, 122A and 163).

- The numerous and competing priorities of RAN senior officers during the Second World War prevented the appropriate submissions being made to the Admiralty (Submissions 92 and 106; Carlton oral submission; Swinden oral submission Sydney 9 February 2012; and Robert Rankin oral submission Brisbane 13 March 2012). Perhaps more effort would have been made had Rankin survived (Carlton oral submission Sydney 9 February 2012).
- Rankin's actions bought time for about 50 men aboard *Anking*, who took to their boat and survived. Forcing the Japanese squadron to deploy for combat probably saved many other ships in the vicinity. The Japanese squadron returned to its base immediately after the *Yarra* action and sunk just one more ship (Submissions 106 and 167A).

Arguments put forward in submissions against the award

22-20 Submissions against the award of the VC or other further recognition for Rankin provided the following counter-views:

- There is evidence to suggest that the British authorities considered that Fegen's action was a 'considerable military achievement'. Despite his gallantry, Rankin's action did not result in a considerable military achievement. The convoy in his charge was wiped out. The lack of award parallels the action in 1917 when the destroyers HM Ships *Mary Rose* and *Strongbow* were sunk in the vain defence of a convoy attacked by German cruisers (Submission 124).
- It is too late to give Rankin any recognition now. He has a submarine named after him, and he is remembered in the Navy (Wilson oral submission Canberra 1 December 2011).

Tribunal review of the merits of the case

22-21 Having concluded through process reviews that Rankin's case was not properly handled at the time (see paragraphs 21-90 and 21-91), the Tribunal conducted separate merit reviews of his actions on 5 February 1942 and 4 March 1942.

22-22 These merits reviews were carried out in accordance with the Tribunal's approach as described in paragraph 8-46 of the Report. In both cases, no specific honour was recommended, and the Tribunal found that there was no conscious decision to even consider an award. Therefore, the Tribunal was required to place itself in the situation of the original decision-maker, making sure that it had before it the sort of evidence that would justify considering these actions for an award.

Empress of Asia action

22-23 In conducting its merits review of Rankin's actions on 5 February 1942, the Tribunal relied heavily on Commander Harrington's Report of Proceedings of 11 February 1942. The Tribunal recognised this as a valid form of recommendation, set out in a Report of Proceedings in accordance with the practices of the time.

22-24 The Tribunal carefully considered the choice of words set out in Harrington's Report of Proceedings in respect of Rankin. Those words, 'In the organisation of the embarkation I was much assisted by Lieutenant Commander Robert William Rankin, RAN, who had embarked in HMAS *Yarra* for passage prior to relieving me on return to Batavia' were designed to bring Rankin's service to the attention of Collins, and nothing further. The Tribunal was not persuaded that Harrington's choice of words regarding Rankin was of sufficient strength to justify the grant of an individual gallantry honour for this action, and considered that had this recommendation ever been passed to the Admiralty Honours and Awards Committee (see Chapter 21), it was likely that no award would have been made.

The loss of HMAS *Yarra*

22-25 After taking into account all of the available evidence and submissions received during the course of this Inquiry, in particular the evidence listed at paragraph 22-14, the Tribunal was able to make the following conclusions:

- Between 0600 and 0700 on the morning of 4 March 1942, whilst enroute from Tjilatjap to Fremantle, *Yarra* and her convoy came under attack from a superior Japanese force of three cruisers and two destroyers.
- At some time early in the action, Rankin ordered *Yarra* to make smoke in order to screen the convoy.
- At some time early in the action, Rankin turned towards and attacked the Japanese force, which by now was probably firing at *Yarra* and her convoy.
- Sometime after that, Rankin was killed when a shell from one of the Japanese ships destroyed the bridge.

22-26 In conducting its merits review and reaching the above conclusions, the Tribunal placed greater weight on the available primary accounts of witnesses than it did with the evidence provided by secondary sources.

22-27 Sometime prior to his death, Rankin may have also broadcast to his ship's company:

We don't stand much of a chance, but it is up to each and every one of you to do the best you can.¹⁶

22-28 A popular claim among submitters advocating for a VC for Rankin is that his actions were comparable to those of Acting Captain Edward Fogarty Fegen, VC, RN, who was awarded the VC for his services in the Atlantic in November 1940. As discussed at paragraphs 8-21 to 8-25, the Tribunal found that it is not possible to come to a sustainable conclusion on the basis of comparisons between individual conduct in military actions. The Tribunal therefore placed no weight on the use of comparisons to assess the merits of this case, even if the prime minister of the day chose to make such a comparison.

22-29 In his submission to the Tribunal, Dr Lewis claimed that Rankin's actions bought time for about 50 men aboard *Anking*, who took to their boat and survived. The

¹⁶ *The Mercury*, 13 July 1942, p. 2. The article mentions that Rankin's message was repeated that night in the 'Australia speaks' session of the Federation of Commercial Broadcasting Stations in the first of a series of broadcasts titled 'Heroes of the Southern Cross', telling of the exploits of Australia's fighting men.

Tribunal agreed that Rankin's actions were probably undertaken in order to provide some very slim chance for those in the convoy to escape. However, in light of the evidence available to it, the Tribunal could not with any confidence find that Rankin's actions actually saved any of those in the convoy who managed to survive the Japanese attack.

- 22-30 The Tribunal viewed Dr Lewis's claim that 'Forcing the Japanese squadron to deploy for combat probably saved many other ships in the vicinity' as a supposition that it could not support, even if the Japanese squadron did return to its base immediately after the *Yarra* action and sunk only one more ship.
- 22-31 The Tribunal considered the options available to Rankin after he sighted the Japanese force early on the bright and clear morning of 4 March 1942. Obviously, none would have been palatable. The Tribunal considered it likely that Rankin immediately knew that the enemy was vastly superior to *Yarra* in both speed and weapon range. He would have quickly known that his only options were gallantly to oppose the force; attempt to run — which would almost certainly have resulted in *Yarra's* being sunk anyway; or to surrender — with or without scuttling the ship.
- 22-32 In light of these considerations, while the Tribunal was able to conclude that Rankin's actions were clearly gallant, the Tribunal was not persuaded they met the exceptionally stringent criteria of the VC for Australia.
- 22-33 The Tribunal also considered the claims of those submitters who did not support medallic recognition for Rankin, including those who expressed the view that he has already been adequately recognised through other forms of recognition.
- 22-34 The Tribunal agrees that in some cases, alternative forms of recognition such as those set out in paragraphs 8-51 to 8-54 of the Report may well be an appropriate way of adequately recognising the gallantry or valour of those who would have otherwise gone unrecognised. This is particularly so regarding actions that took place several decades ago and where only a limited amount of clear and reliable evidence is available. However, the Tribunal formed the view that in the case of HMAS *Yarra*, the ongoing maladministration and repeated failure to take account of evidence that could have resulted in medallic recognition, had that evidence been properly handled and considered at the time, was such that the Tribunal was compelled to consider an appropriate form of medallic recognition, in addition to the other forms of recognition already afforded to Rankin (for full discussion see Chapter 21).
- 22-35 As discussed in Chapter 21, the Tribunal found that coming to a sustainable recommendation for an individual award to Rankin or the officers or men from *Yarra* would be difficult in light of the weight of evidence currently available, particularly given the passage of time — over 70 years since *Yarra's* loss.
- 22-36 In light of these findings, the Tribunal found it appropriate to recommend that the service of Rankin, and other members of *Yarra's* complement on 5 February and 4 March 1942, be recognised with the award of the Unit Citation for Gallantry, which the Tribunal noted is now available to recognise acts of extraordinary gallantry in action and may be awarded posthumously (for the Tribunal's full discussion see Chapter 21).

Tribunal conclusion

- 22-37 The Tribunal concluded that in relation to the events of 5 February 1942 and 4 March 1942, on process, Rankin's case was not properly handled or considered at the time, to the extent that an injustice had taken place. However, the Tribunal concluded that there was insufficient evidence available to recommend the award of an individual gallantry honour to Rankin for his actions on either of these dates.

Tribunal recommendation

- 22-38 To remedy the injustice, the Tribunal recommends that Lieutenant Commander Rankin, along with the other members of HMAS *Yarra*'s crew who served on either 5 February 1942 or 4 March 1942, receive the Unit Citation for Gallantry for their extraordinary gallantry during both of these actions.
- 22-39 The Tribunal also supports the steps the RAN has already taken to recognise Rankin in other ways, particularly in the naming of a major combatant vessel. The Tribunal recommends the perpetual recognition of Rankin in this manner.

CHAPTER TWENTY-THREE

LIEUTENANT COMMANDER FRANCIS EDWARD SMITH

23-1 Francis Edward Smith was born in Lismore, New South Wales, on 8 October 1908. In 1926 he joined the Royal Australian Naval Reserve, serving on various ship and shore postings until he was called to full-time service on 23 January 1940.

23-2 On 4 April 1940 he joined the sloop HMAS *Yarra*, seeing action in the Red Sea, the Persian Gulf and the Mediterranean.

23-3 When war broke out in the Pacific, *Yarra*, under the command of Commander Wilfred Hastings Harrington, RAN, was recalled to Singapore. On 31 December 1941 Smith was promoted to Lieutenant Commander and became *Yarra*'s second in command. On 5 February 1942, Smith led a gun crew, when the sloop rescued over 1,800 people from the liner *Empress of Asia*, the victim of a Japanese air attack off Singapore. Smith was mentioned in Commander Harrington's Report of Proceedings following this action (see paragraph 21-12). Smith served in *Yarra* until the sloop was sunk on 4 March 1942. It is these two actions that are the subject of this Inquiry.

23-4 The actions of *Yarra*'s crew on both occasions are discussed in detail in Chapter 21.



Lieutenant Commander
Francis Edward Smith

Photograph courtesy of Mr John
Bradford

Recognition for service

23-5 For his naval service, Lieutenant Commander Smith was entitled to the following awards:

- 1939–1945 Star
- Africa Star
- Burma Star with Pacific Clasp
- War Medal 1939–1945
- Australia Service Medal 1939–1945.

What has led to the review?

23-6 Lobbying for posthumous recognition for those serving in HMAS *Yarra* began as early as March 1947, when an article was published in the *Sydney Morning Herald*.¹ Following the publication of this article, the Ex-Naval Men's Association of Victoria also made representations to the Minister of the Navy on the issue. Unfortunately,

¹ Column 8, *The Sydney Morning Herald*, 4 March 1947, p. 1

the contents of this correspondence are largely unknown due to the file not being marked for retention.²

23-7 Several other newspaper articles on the issue have appeared over time, often coinciding with the anniversary of *Yarra*'s loss. More recently, Mr John Bradford has taken up the cause for recognition for Smith in websites, articles and books.

23-8 Smith was included in the Tribunal's Terms of Reference after being proposed by the Department of Defence. Defence advised at a public hearing on 31 May 2012 that Smith was added to the list after advice from the RAN Sea Power Centre – Australia that they had previously received a number of submissions from members of the public pressing the case for recognition for Smith.

Submissions

23-9 The Tribunal has received seven written submissions and four oral submissions in relation to Lieutenant Commander Smith.

Written submissions

- a. Submissions 45 and 45A — Commander Greg Swinden (for recognition for Taylor and HMAS *Yarra*)
- b. Submission 86 — Mr John Bradford (for)
- c. Submission 99 — Mr Graham Wilson (against)
- d. Submission 124 — Mr Richard Pelvin (against)
- e. Submissions 185 and 185A — Mr Ralph Bull (for recognition for HMAS *Yarra*).

Oral submissions

- a. Mr Graham Wilson — Public Hearing Canberra, 1 December 2011 (against)
- b. Mr Richard Pelvin — Public Hearing Canberra, 2 December 2011 (against)
- c. Commander Greg Swinden, RAN — Public Hearing Sydney, 9 February 2012 (for)
- d. Mr John Bradford — Public Hearing Adelaide, 14 February 2012 (for).

The available evidence

Empress of Asia action

23-10 As discussed in Chapter 21, Commander Harrington brought Smith's actions to the notice of his next in command, Commodore John Collins, RAN, in accordance with the contemporary process of initiating recommendations for honours. See paragraph 21-12 for details of Harrington's words on Smith's actions of 5 February.

² Navy Office Ledger, NAA: Melbourne, book 429/205.

23-11 As discussed in Chapter 21, it is not known what action Collins took regarding Harrington's report. However, what is known is that a copy of this report was also forwarded for information to the Australian Commonwealth Naval Board (ACNB); and that service records of some of those mentioned in the report, including Smith, were annotated (see paragraphs 21-73 to 21-77).

The loss of HMAS *Yarra*

23-12 As early as March 1942, Australian naval authorities had Commander Harrington's detailed Report of Proceedings covering the *Empress of Asia* action. But only a brief and (as time would prove) partially inaccurate account of *Yarra*'s final action was available to them immediately afterwards (see paragraph 21-38). The passage of time brought further evidence to their attention.

23-13 This evidence included:

- the 11 March report made by Lieutenant MR Mathews, RN, the senior surviving officer HMS *Anking*, who arrived at Colombo in March 1942 (see paragraph 21-35); it is not known when this correspondence was received in Australia;³
- the 19 March signal from Commander-in-Chief Eastern Fleet, Vice Admiral Sir Geoffrey Layton, RN, to Collins and the ACNB, which gave a brief account of *Yarra*'s final action;⁴
- the report of Lieutenant FR Nixon, Royal Naval Reserve, of *MMS51*, submitted to Collins in March 1942 (see paragraph 21-37);⁵
- the May 1942 statement of Ordinary Seaman Jack Archibald (see Appendix 10);
- reports published in newspapers and broadcast in the media from March 1942 onwards;
- the report of 20 May from the Department of the Navy to Minister Makin, which Makin used to report to the House of Representatives (see paragraph 21-44);⁶
- the report provided to Prime Minister Curtin on 12 November 1942 by the Chief of Naval Staff and First Naval Member Vice Admiral Guy Royle, RN, as requested by the Minister for the Navy, The Hon. Norman Makin (see paragraphs 21-45 to 21-49);⁷
- Parry's *HMAS Yarra, the story of a gallant ship*,⁸ and Jones and Idriess's *The silent service: action stories of the ANZAC Navy*,⁹ both published in 1944;
- *A Proud page in our history* published by the Australian Government Department of Information in 1944, reconstructing the story of the losses of *Perth* and *Yarra*;

3 Columbo (sic) notes, pp. 52–53, NAA: B6121, 337.

4 Signal 191215Z, NAA: MP151/1 429/205/2; Appendix III to East Indies War Records for March 1942, TNA: ADM1/12190.

5 Minute, Naval Staff Office Fremantle 0/19/21, TNA: ADM 199/357.

6 'The Royal Australian Navy in Malayan and Dutch East Indies Waters', NAA: MP1049/5, 1953/2/5.

7 Letter, Minister for the Navy, 12 November 1942, NAA: MP 1049/5, 1968/2/633.

8 AF Parry, *HMAS Yarra, the story of a gallant ship*, Angus and Robertson, Sydney, 1944.

9 Thomas Jones & Ion Idriess, *The silent service: action stories of the ANZAC Navy*, Angus and Robertson, Sydney, 1944.

- various reports from *Anking* survivors, brought to the attention of the ACNB in late 1945;¹⁰
- a letter from Able Seaman John F Murphy, a prisoner aboard the IJNS *Maya*, provided to the Official Historian in November 1946;¹¹ and
- Japanese responses to questions from naval historical staff regarding the loss of the *Yarra*, which were provided in late 1947.¹²

Recognition for Smith

23-14 Beyond the annotation on his service record for his actions on 5 February 1942, the Tribunal is unaware of any other recognition for Smith's actions on 5 February or 4 March 1942.

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

Arguments put forward in submissions for the award

23-15 The arguments put forward for the award of the Victoria Cross (VC) or other recognition for Lieutenant Commander Smith were as follows:

- The opportunity for the men of HMAS *Yarra* to have their bravery reviewed and recognised never actually took place, and this oversight needs to be corrected, regardless of the passage of time (Submission 45).
- If any recognition were to be given for the action of 5 February, it would be fitting to give it to Smith ... If ever there was a case of manifest injustice, this has to be it (Submission 86).

Arguments put forward in submissions against the award

23-16 Submissions against the award of the VC or other recognition for Lieutenant Commander Smith provided the following counter-views:

- I personally believe Smith probably acted in the most exemplary and gallant fashion (on 4 March 1942). However, I do not know that and certainly cannot prove that and neither can anyone else (Submission 99).

Tribunal review of the merits of the case

23-17 Having concluded through process reviews that Smith's case was not properly handled at the time (see paragraphs 21-91 and 21-92), the Tribunal conducted separate merit reviews of his actions on 5 February 1942 and 4 March 1942. These merits reviews were carried out in accordance with the Tribunal's approach as described in paragraph 8-46 of the Report. In both cases, no specific honour was

10 Letter, Lieutenant Thode to Australian Commonwealth Naval Board, 2 September 1945, NAA B6121/3 52T; Captain Eighth Submarine Flotilla Minute 5944/280, NAA: MP1185/8.

11 Letter, Mr John F Murphy, 9 November 1946, AWM 69, 45/1.

12 Letter, Officer Commanding the Australian Military History Section, British Commonwealth Occupation Forces, Japan, 16 December 1947, AWM 54, 423/4/82.

recommended, and the Tribunal found that there was no conscious decision to even consider an award. Therefore, the Tribunal was required to place itself in the situation of the original decision maker, making sure that it had before it the sort of evidence that would justify considering these actions for an award.

Empress of Asia action

- 23-18 In conducting its merits review of Smith's actions on 5 February 1942, the Tribunal relied heavily on Commander Harrington's Report of Proceedings of 11 February 1942. The Tribunal recognised this as a valid form of recommendation, set out in accordance with the practices of the time.
- 23-19 The Tribunal carefully considered the choice of words set out in Harrington's Report of Proceedings in respect of Smith. Those words, 'It is submitted that consideration might be given to [Smith] receiving some recognition for [his] conduct' (as was the case with the members of No 3 Gun Crew, Able Seamen Lloyd, Kimmins and Oliver [see paragraph 21-12]), imply that recognition of some of these men might have occurred, had the recommendation been properly handled and submitted to the Admiralty Honours and Awards Committee.
- 23-20 The Tribunal considered it likely that the words used by Harrington led to Smith's service record being marked 'Considered worthy of a Mention in Despatches while serving in Yarra' at some point.¹³ But on the basis of the available evidence, the Tribunal could not be satisfied that the additions to the service records of Smith, Kimmins and Oliver were the result of a process of consideration by the ACNB of their actions on 5 February 1942, particularly in light of the fact that Lloyd's record was not annotated in this way. The Tribunal concluded that there is insufficient evidence to recommend Smith for an individual gallantry honour for his service on 5 February 1942.

The loss of HMAS *Yarra*

- 23-21 From all of the submissions and evidence collected by the Tribunal over the course of this Inquiry, in particular the evidence listed at paragraph 22-14, the Tribunal was not able to find any evidence of any particular gallant conduct on the part of Smith when *Yarra* was lost. The Tribunal found that Smith's Commanding Officer, Lieutenant Commander Robert Rankin, was killed when a shell from one of the Japanese ships hit the bridge, and from that point, Smith would have been in command until he himself was killed. It is possible that it was Smith who gave the order to abandon ship and that, for a time, he assisted with getting the ship's company into the floats.
- 23-22 On that basis, the Tribunal found that there was insufficient evidence to recommend Smith for an individual gallantry honour for his actions on 4 March 1942.

¹³ Service Record, NAA : A6769, Smith FE.

Tribunal conclusion

- 23-23 The Tribunal concluded that in relation to the events of 5 February and 4 March 1942, on process, Lieutenant Commander Smith's case was not properly handled or considered at the time, to the extent that an injustice had occurred. However, the Tribunal concluded that there was insufficient evidence available to recommend the award of an individual gallantry honour to Smith for his actions on either of these dates.

Tribunal recommendation

- 23-24 To remedy the injustice, the Tribunal recommends that Lieutenant Commander Smith, along with the other members of *Yarra*'s ship's company who served in *Yarra* on either 5 February 1942 or 4 March 1942 receive the Unit Citation for Gallantry for their extraordinary gallantry on both of these dates.

CHAPTER TWENTY-FOUR

ACTING LEADING SEAMAN RONALD TAYLOR

24-1 Ronald 'Buck' Taylor was born in Carlton, Melbourne, on 29 April 1918. The fourth of 10 children, Taylor developed an interest in the RAN through watching ships entering port and from talking to sailors about life in the service.¹ At the age of seven he was given a uniform, and became the unofficial mascot of the sloop HMAS *Marguerite*.

24-2 Taylor joined the RAN in 1935, and in the following year was posted to the cruiser HMAS *Australia*, prior to serving on the destroyer HMAS *Vampire* and the cruiser HMAS *Adelaide*.

24-3 Taylor joined the sloop HMAS *Yarra* on 30 August 1939, seeing action in the Red Sea, the Persian Gulf and the Mediterranean. During *Yarra*'s overseas service, the ship was under the command of Commander Wilfred Hastings Harrington, RAN.

24-4 When war broke out with Japan, *Yarra* was recalled for duty closer to home. (Acting) Leading Seaman Taylor was the captain of a gun crew when *Yarra* came under aerial attack while rescuing over 1,800 people from the liner *Empress of Asia* off Singapore on 5 February 1942. Taylor was mentioned by Commander Harrington in his Report of Proceedings following this action (see paragraph 21-12). Taylor was killed when *Yarra* was sunk on 4 March 1942. It is these two latter actions that are the subject of this Inquiry.

24-5 The actions of *Yarra*'s crew on both occasions are discussed in detail in Chapter 21.



Acting Leading Seaman
Ronald Taylor
(Photograph courtesy of Mr Garry
Taylor)

Recognition for service

24-6 For his naval service, Leading Seaman Taylor was entitled to the following awards:

- 1939–1945 Star
- Africa Star
- Burma Star with Pacific Clasp
- War Medal 1939–1945
- Australia Service Medal 1939–1945.

What has led to the review?

24-7 Frustrated that a full account of *Yarra*'s end was never issued, the brothers of Acting Leading Seaman Ronald 'Buck' Taylor broke into Victoria Barracks in Melbourne sometime around the end of the war to try to find more information,

¹ Mr Garry Taylor, Submission 54.

but without success.² Taylor's brothers (Ray and Lawrence) also served in the RAN.

- 24-8 Lobbying for recognition for those serving in *Yarra* began as early as March 1947, when an article was published in the *Sydney Morning Herald*.³ Following publication of this article, the Ex-Naval Men's Association of Victoria made representations to the Minister of the Navy on the issue. Unfortunately, the contents of this correspondence are largely unknown due to the file not being marked for retention.⁴
- 24-9 Several other newspaper articles on the issue have appeared over time, often coinciding with the anniversary of *Yarra*'s loss. More recently, authors such as Commander Greg Swinden, RAN, Dr Tom Lewis and Mr John Bradford have taken up the cause for recognition for Taylor in websites, articles and books.
- 24-10 The matter of recognition for Taylor has also been raised in the Australian Parliament. On 3 June 2004, Mr Tony Smith, MP (Liberal, Casey, Victoria) recounted the actions of *Yarra*, and went on to request that 'the Navy consider more formally recognising his bravery, perhaps through the naming of a ship in the future'.⁵ On 28 February 2007, Smith, by then the Parliamentary Secretary to the prime minister, mentioned that 'the families of those who survive to pass on the stories of *Yarra* very much want to have the contribution recognised in a major way'.⁶
- 24-11 Taylor was included in the Tribunal's Terms of Reference after being proposed by the Department of Defence. Defence advised at a public hearing on 31 May 2012 that Taylor was added to the list after advice from the RAN Sea Power Centre – Australia that they had received a number of submissions in the past from members of the public pressing the case for recognition for Taylor.

Submissions

- 24-12 The Tribunal has received 14 written submissions and 6 oral submissions in relation to Leading Seaman Taylor.

Written submissions

- a. Submissions 45 and 45A — Commander Greg Swinden, RAN (for)
- b. Submissions 54, 54A, 54B and 54C — Mr Garry Taylor and Ms Emilia Despotovski (for)
- c. Submission 86 — Mr John Bradford (for)
- d. Submission 92 — Mr Michael Carlton (for)
- e. Submission 99 — Mr Graham Wilson (against)
- f. Submission 111 — Mr RE Popple (for)

2 Michael Ryan, 'The gunner's last stand' *Sunday Herald Sun*, 29 October 1995, p. 78.

3 Column 8, *The Sydney Morning Herald*, 4 March 1947, p. 1.

4 Navy Office Ledger, NAA: Melbourne, Book 429/205.

5 CPD, H of R, 3 June 2004 (Tony Smith).

6 CPD, H of R, 28 February 2007 (Tony Smith).

- g. Submission 124 — Mr Richard Pelvin (against)
- h. Submissions 172 and 172A — Mr Angus Walsh (for)
- i. Submissions 185 and 185A — Mr Ralph Bull (for recognition for HMAS *Yarra*).

Oral submissions

- a. Mr Graham Wilson — Public Hearing Canberra, 1 December 2011 (against)
- b. Mr Richard Pelvin — Public Hearing Canberra, 2 December 2011 (against)
- c. Mr Garry Taylor and Ms Emelia Despotovski — Public Hearing Melbourne, 15 December 2011 (for)
- d. Mr Michael Carlton — Public Hearing Sydney, 8 February 2012 (for)
- e. Commander Greg Swinden — Public Hearing Sydney, 9 February 2012 (for)
- f. Mr John Bradford — Public Hearing Adelaide, 14 February 2012 (for).

The available evidence

Empress of Asia action

- 24-13 As discussed in Chapter 21, Commander Harrington brought Taylor's actions during the 5 February 1942 *Empress of Asia* action to the notice of his next in command, Commodore John Collins, RAN. This was in accordance with the contemporary process of initiating recommendations for honours. See paragraph 21-12 for details of Harrington's account of Taylor's actions of 5 February.
- 24-14 As discussed in Chapter 21, it is not known what action Collins took regarding Harrington's report. However, what is known is that a copy of this report was also forwarded for information to the Australian Commonwealth Naval Board (ACNB) and that service records of some of those mentioned in the report were annotated (see paragraphs 21-73 to 21-77).

The loss of HMAS *Yarra*

- 24-15 As early as March 1942, Australian naval authorities had Commander Harrington's detailed Report of Proceedings covering the *Empress of Asia* action. But only a brief and (as time would prove) partially inaccurate account of *Yarra*'s final action was available to them immediately afterwards (see paragraph 21-38). The passage of time brought further evidence to their attention.
- 24-16 This evidence included:
 - the 11 March report made by Lieutenant MR Mathews, RN, the senior surviving officer HMS *Anking*, who arrived at Colombo in March 1942 (see paragraph 21-35). It is not known when this correspondence was received in Australia;⁷

⁷ Columbo [sic] notes, pp. 52–53, NAA: B6121, 337.

- the 19 March signal from Commander-in-Chief Eastern Fleet, Vice Admiral Sir Geoffrey Layton, RN, to Collins and the ACNB, which gave a brief account of *Yarra*'s final action;⁸
- the report of Lieutenant FR Nixon, Royal Naval Reserve, of *MMS51*, submitted to Collins in March 1942 (see paragraph 21-37);⁹
- the May 1942 statement of Ordinary Seaman Jack Archibald (see Appendix 10);
- reports published in newspapers and broadcast in the media from March 1942 onwards.
- the Report of 20 May from the Department of the Navy to Minister Makin, which Makin used to report to the House of Representatives (see paragraph 21-44).¹⁰
- the report provided to Prime Minister Curtin on 12 November 1942 by the Chief of Naval Staff and First Naval Member Vice Admiral Guy Royle, RN, as requested by the Minister for the Navy, The Hon. Norman Makin (see paragraphs 21-45 to 21-49).¹¹
- Parry's *HMAS Yarra, the story of a gallant ship*,¹² and Jones and Idriess's *The silent service: action stories of the ANZAC Navy*,¹³ both published in 1944.
- *A proud page in our history*, published by the Department of Information in 1944, reconstructing the story of the losses of *Perth* and *Yarra*.
- various reports from *Anking* survivors, brought to the attention of the ACNB in late 1945.¹⁴
- a letter from Able Seaman John F Murphy, a prisoner aboard the IJNS *Maya*, provided to the Official Historian in November 1946.¹⁵
- Japanese responses to questions from naval historical staff regarding the loss of the *Yarra*, which were provided in late 1947.¹⁶

Existing recognition for Taylor

- 24-17 Taylor has received some recognition for his deeds on 4 March 1942. His example is celebrated as one of 'Loyalty', one of the RAN's five core values.¹⁷
- 24-18 In his oral submission on 9 March 2012, Commander Swinden told the Tribunal that some consideration had been given to naming a Collins-class submarine in honour of Taylor; however, possibly due to a reduction in the number of

8 Signal 191215Z, NAA: MP151/1 429/205/2; Appendix III to East Indies War Records for March 1942, TNA: ADM1/12190.

9 Minute, Naval Staff Office Fremantle 0/19/21, TNA: ADM 199/357.

10 'The Royal Australian Navy in Malayan and Dutch East Indies Waters', NAA: MP1049/5, 1953/2/5.

11 Letter, Minister for the Navy, 12 November 1942, NAA: MP 1049/5, 1968/2/633.

12 AF Parry, *HMAS Yarra, the story of a gallant ship*, Angus and Robertson, Sydney, 1944.

13 Thomas Jones & Ion Idriess, *The silent service: action stories of the ANZAC Navy*, Angus and Robertson, Sydney, 1944.

14 Letter, Lieutenant Thode to Australian Commonwealth Naval Board, 2 September 1945, NAA: B6121/3 52T; Captain Eighth Submarine Flotilla Minute 5944/280, NAA: MP1185/8.

15 Letter, Mr John F Murphy, 9 November 1946, AWM 69, 45/1.

16 Letter, Officer Commanding the Australian Military History Section, British Commonwealth Occupation Forces, Japan, 16 December 1947, AWM 54, 423/4/82.

17 Royal Australian Navy, *Navy values: serving Australia with pride*, Department of Defence, Canberra, September 2009.

submarines to be built from eight to six, Taylor was not eventually honoured in this way.¹⁸

24-19 On 18 September 2012, following comments made at a public hearing of the Tribunal on 31 May 2012, the Chief of Navy, Vice Admiral Ray Griggs, announced that a recruit division at HMAS *Cerberus* would be named in honour of Taylor.

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

Arguments put forward in submissions for the award

24-20 The arguments put forward for the award of the Victoria Cross (VC) or other recognition for Taylor were as follows:

- The failure to have the bravery of *Yarra's* company reviewed and recognised is an oversight which needs to be corrected, regardless of the passage of time (Submission 45). It is a case of manifest injustice (Submission 86).
- Taylor's actions meet the criteria for the award of the VC and he deserves the nation's highest award for gallantry (Submissions 54B and 92; and Taylor and Despotovski oral submissions Melbourne 15 December 2011).
- The numerous and competing priorities on RAN senior officers during the Second World War prevented the appropriate submissions being made to the Admiralty (Submissions 92 and 106; Carlton oral submissions Sydney 8 February 2012; Swinden oral submission Sydney 9 February 2012; and Robert Rankin oral submission Brisbane 13 March 2012). Perhaps more effort would have been made had Rankin and Taylor survived (Carlton oral submission Sydney 8 February 2012).
- Taylor's decision enabled 34 men to escape, though that decision cost him his life, as he would have well known at the time he made this sacrifice (Despotovski oral submission Melbourne 15 December 2011).

Arguments put forward in submissions against the award

24-21 Submissions against the award of the VC or other recognition for Taylor provided the following counter-views:

- On the one hand, Taylor's actions were admirable and deserving of the highest praise. On the other hand, Taylor deliberately disobeyed a lawful command to abandon ship. As admirable as Taylor's action was, it was obviously totally pointless as HMAS *Yarra* was ablaze and sinking, Taylor's fire was totally without effect on the enemy, and by his actions Taylor was endangering the lives of his shipmates. As a leading rating of several years' service and experience, Taylor would have been of far more useful service in the life rafts, working to save the lives of his shipmates (Submission 99).
- The time for Taylor to be recognised was 1942, not 2011, almost 60 (sic) years after the event. The authorities of the day, for whatever reason, chose not to

18 Oral submission by Commander Greg Swinden, Public Hearing Sydney, 9 February 2012.

make any award to Leading Seaman Taylor. While we may not agree with the decision, we cannot argue with the reasons, for we were not there at the time (Submission 99).

Tribunal review of the merits of the case

24-22 Having concluded through process reviews that Taylor's case was not properly handled at the time (see paragraphs 21-91 to 21-92), the Tribunal conducted separate merit reviews of his actions on 5 February 1942 and 4 March 1942. These merits reviews were carried out in accordance with the Tribunal's approach as described in paragraph 8-46 of the Report. In both cases, no specific honour was recommended, and the Tribunal found that there was no conscious decision to even consider an award. Therefore, the Tribunal was required to place itself in the situation of the original decision-maker, making sure that it had before it the sort of evidence that would justify considering these actions for an award.

Empress of Asia action

24-23 In conducting its merits review of Taylor's actions on 5 February 1942, the Tribunal relied heavily on Commander Harrington's Report of Proceedings of 11 February 1942. The Tribunal recognised this as a valid form of recommendation, set out in accordance with the practices of the time.

24-24 The Tribunal carefully considered the choice of words set out in Harrington's Report of Proceedings in respect of Taylor (see paragraph 21-12). They were: 'Acting Leading Seaman Ronald Taylor, ON 20863, the Captain of Gun of No. 2 Gun, deserves commendation in that, on this occasion, as on many others, he controlled his gun with judgement and determination. This rating's keenness and courage are a good example to all those in his vicinity'. The Tribunal concluded that a Mention in Despatches might have been awarded to Taylor, had the recommendation been properly handled and submitted to the Admiralty Honours and Awards Committee.

24-25 However, the Tribunal found no annotation on Taylor's service record about his actions on 5 February 1942, as was the case with Lieutenant Commander Smith and Able Seaman Kimmins and Oliver (see paragraphs 21-76 and 21-77). On the basis of the available evidence, the Tribunal is not satisfied that the additions to the service records of Smith, Kimmins and Oliver were the result of a process of consideration by the ACNB of their actions on 5 February 1942, particularly in light of the fact that Able Seaman Lloyd's record was not annotated in this way. The Tribunal concluded that there is insufficient evidence to recommend Taylor for an individual gallantry honour for his service on 5 February 1942.

The loss of HMAS *Yarra*

- 24-26 After taking into account all the submissions and evidence presented throughout the course of this Inquiry, in particular the evidence listed at paragraph 24-16, the Tribunal was able to make the following conclusions:
- Between 0600 and 0700 on the morning of 4 March 1942, whilst enroute from Tjilatjap to Fremantle, HMAS *Yarra* and her convoy came under attack from a superior Japanese force of three cruisers and two destroyers.
 - At some time early in the action, *Yarra*'s Commanding Officer, Lieutenant Commander Rankin ordered *Yarra* to make smoke in order to screen the convoy.
 - At some time early in the action, Rankin turned towards and attacked the Japanese force, which by now was probably firing at *Yarra* and her convoy.
 - Sometime after that, Rankin was killed when a shell from one of the Japanese ships destroyed the bridge. Around this time, the order to abandon ship was made.
 - After being made aware of the order to abandon ship, Taylor instead chose to remain at his gun and keep firing at the Japanese.
 - Sometime later, after some of the crew had made it to the rafts, Taylor was killed.
- 24-27 The Tribunal accepts that while Taylor probably did choose to disobey a lawful order to abandon ship in order to continue engaging the enemy, it does not accept the speculation that in doing so, he endangered the safety of his fellow shipmates. Rather, the Tribunal viewed Taylor's act as one of gallantry, and one which should continue to be recognised into the future.
- 24-28 The Tribunal agrees that in some cases, alternative forms of recognition such as those set out in paragraphs 8-51 to 8-54 of the Report may well be an appropriate way of adequately recognising the gallantry or valour of those who would have otherwise gone unrecognised. This is particularly so regarding actions that took place seven decades ago and where only a limited amount of clear and reliable evidence is available. However, the Tribunal formed the view that, in the case of HMAS *Yarra*, the maladministration and repeated failure to take account of evidence that could have resulted in medallic recognition, had that evidence been properly handled and considered at the time, was such that the Tribunal was compelled to consider an appropriate form of medallic recognition, in addition to the other forms of recognition already afforded to Taylor (for full discussion see Chapter 21).
- 24-29 While the Tribunal received a range of enthusiastic and well-researched submissions in support of Taylor's gallantry, in making its recommendations it was nonetheless constrained by a lack of primary evidence about his actions on 4 March 1942. The Tribunal found that this lack of evidence was such that it could not recommend the award of an individual gallantry honour to Taylor.
- 24-30 In light of these findings, the Tribunal found it appropriate to recommend that the service of Taylor, and other members of *Yarra*'s complement on 5 February and 4 March 1942 be recognised with the award of the Unit Citation for Gallantry, which

the Tribunal noted is now available to recognise acts of extraordinary gallantry in action and may be awarded posthumously (for the Tribunal's full discussion see Chapter 21).

Tribunal conclusion

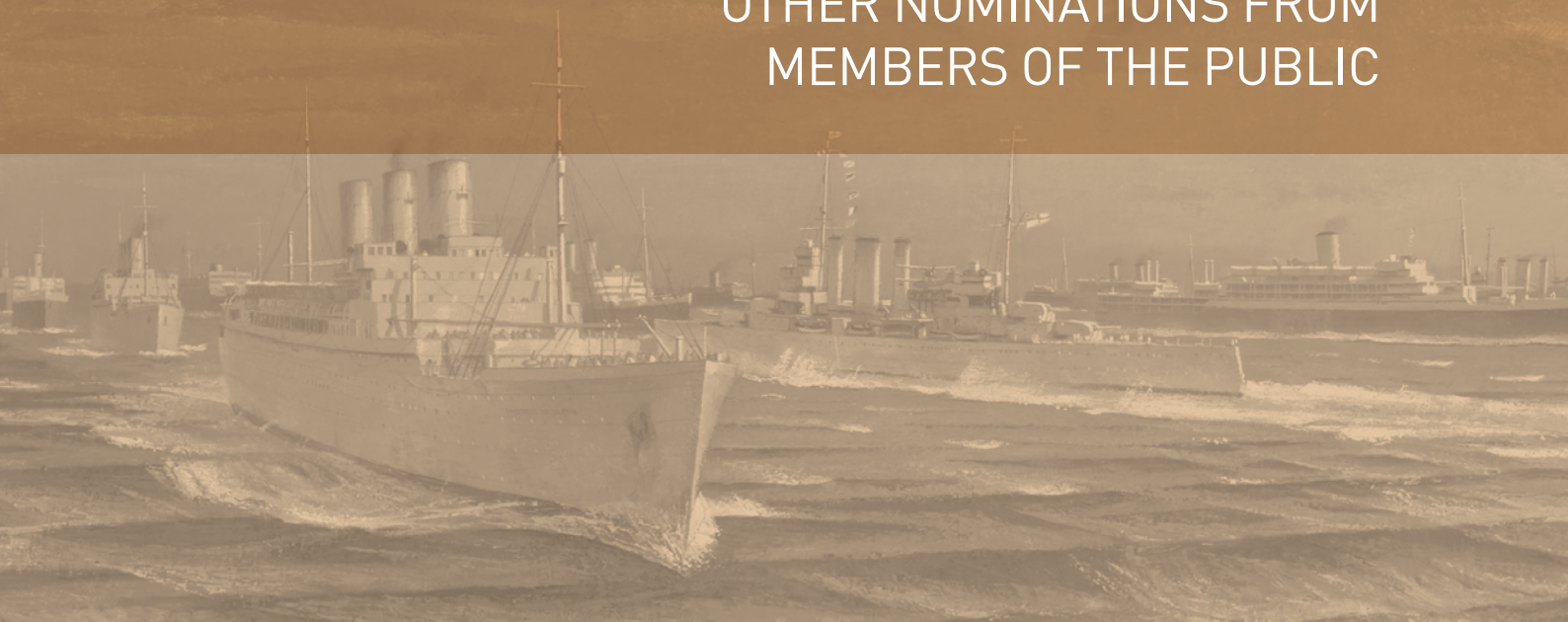
- 24-31 The Tribunal concluded that in relation to the events of 5 February 1942 and 4 March 1942, on process, Taylor's case was not properly handled or considered at the time, to the extent that an injustice had taken place. However, the Tribunal concluded that there was insufficient evidence available to recommend the award of an individual gallantry honour to Taylor for his actions on either of these dates.

Tribunal recommendation

- 24-32 To remedy the injustice, the Tribunal recommends that Leading Seaman Taylor, along with the other members of *Yarra's* crew who served on either 5 February 1942 or 4 March 1942, receive the Unit Citation for Gallantry for their extraordinary gallantry on both of these dates.
- 24-33 The Tribunal also supports the steps the RAN has recently taken to recognise Taylor in other ways, particularly in the naming of the recruit division at HMAS *Cerberus*. The Tribunal suggests the perpetual recognition of Taylor in this manner.



PART THREE
OTHER NOMINATIONS FROM
MEMBERS OF THE PUBLIC



CHAPTER TWENTY-FIVE

OTHER NOMINATIONS FROM MEMBERS OF THE PUBLIC

- 25-1 On 21 February 2011 the Parliamentary Secretary for Defence, Senator The Hon. David Feeney directed the Tribunal to inquire into and report on 'Unresolved Recognition for Past Acts of Naval and Military Valour'. As part of the Terms of Reference (TOR), the Tribunal was directed:
- to receive submissions supporting recognition of acts of gallantry and valour performed by other members of the Defence Force [in addition to the 13 personnel named specifically listed in the TOR].¹ Submissions are only to be received where supported by appropriate documentation. Submissions based on hearsay or anecdotal evidence may not be considered.
- [and]
- The Tribunal is to report to the Parliamentary Secretary for Defence on the detail of the additional submissions received in order for the Government to determine whether a proposal for recognition should be referred to the Tribunal for review.
- 25-2 Advertisements were placed in the media giving notice of the Inquiry and calling for submissions supporting recognition of acts of gallantry and valour performed by other members of the Defence Force. Submissions closed on 30 June 2011, and the Tribunal received 76 submissions related to claims concerning individuals other than those named in the TOR by this date. 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 174 submissions relating to claims concerning 140 individuals and groups.
- 25-3 All the submissions were acknowledged by the Secretariat. A list of the members of the Defence Force nominated by the public is provided at Tables 25-1 and 25-2.
- 25-4 In accordance with the TORs, a sub-committee, composed of the Chair of the Tribunal Mr Alan Rose and Tribunal Member Air Commodore Mark Lax (Retd), undertook a preliminary analysis of each submission to assess whether it was supported by appropriate documentation.
- 25-5 The outcome of this analysis was confirmed by the Tribunal.
- 25-6 The Chair of the Tribunal, in accordance with the TORs, has separately conveyed to the Australian Government copies of all additional submissions for recognition together with the Tribunal's preliminary assessment of the appropriateness of supporting documents, so that the government may confirm what submissions should be received under the TORs for consideration and whether any should be referred to the Tribunal for review.

¹ For the purposes of this Inquiry, the Tribunal considered that the term 'the Defence Force' covered the armed forces from Federation to the present day.

Table 25-1 Individuals nominated by the public for acts of gallantry and valour

Surname	First Name/s	Rank /Title	Service	Conflict
Alcorta	Frank	Sergeant	Army	Vietnam
Allen	Edward	Private	Army	Second World War
Allen	Leslie	Corporal	Army	Second World War
Allsopp	Raymond	Captain	Army	Second World War
Anderson	Francis Douglas	Gunner	Army	Second World War
Anderson	Herbert Spencer	Commissioned Warrant Officer	Navy	Second World War
Band	John Morell	Lieutenant Commander	Navy	Second World War
Barbottis	Angelo	Corporal	Army	Second World War
Barker	John Edward	Warrant Officer	Army	Vietnam
Barry	Brian	Sergeant	Air Force	Second World War
Bell	Alec	Private	Army	Vietnam
Bextrum	Neil Raymond	Private	Army	Vietnam
Bloomfield	Steve	Lance Corporal	Army	Confrontation
Boston	Vernon Robert	Private	Army	Second World War
Botterill	Keith	Private	Army	Second World War
Brack	James	Captain	Army	First World War
Braithwaite	Richard	Sergeant	Army	Second World War
Brett	Ron	Private	Army	Vietnam
Brown	Edward	Sergeant	Army	Second World War
Bush	George John	Leading Seaman	Navy	First World War
Butler	Rex	Sergeant	Army	Second World War
Cahir (Carr)	Frank	Staff Sergeant	Army	Second World War
Cameron	Bruce	Lieutenant	Army	Vietnam
Campbell	Ian Martin	Private	Army	Vietnam
Campbell	Owen Colin	Gunner	Army	Second World War
Carlson	Arthur	Private	Army	First World War
Carr	Henry George	2nd Lieutenant	Army	First World War
Chapman	Graeme	Major	Army	Vietnam
Cooper	Garry G	Flight Lieutenant	Air Force	Vietnam
Costin	Keith Hamilton	Private	Army	Second World War
Cox	Arthur John	Warrant Officer 1	Army	First World War
Cox	Barry	Not specified	Navy	Melbourne-Voyager collision
Craig	Felix	Driver	Army	Second World War
Crease	Wally	Gunner	Army	Second World War
Curby	George Alfred	Lieutenant	Army	Second World War
Curran	Andrew	Naval Air Mechanic	Navy	Vietnam
Davis, DSO, MC	Clayton Edginton	Lieutenant	Army	Second World War

Table 25-1 Individuals nominated by the public for acts of gallantry and valour (continued)

Surname	First Name/s	Rank /Title	Service	Conflict
Davison	Walter	Private	Army	Vietnam
Dawson (aka Molde)	Leigh Keith Kenneth Clifton)	Corporal	Army	Second World War
Derrick, VC, DCM	Tom	Lieutenant	Army	Second World War
Douglas	James	Flight Lieutenant	Air Force	Second World War
Edgar	William Henry	Warrant Officer	Navy	First World War
Emmett	Edward Victor	Corporal	Army	Second World War
Evans	Walter Cyril	Private	Army	Second World War
Fairey	Bill	Corporal	Army	Second World War
Ferrier	Sutton	Corporal	Army	First World War
Fisher	Cyril Raymond	Private	Army	Second World War
Fitzgibbon	Nigel	Corporal	Army	Confrontation
Fletcher	John	Private	Army	Second World War
Forrester	Charlie	Private	Army	Second World War
Forsdike	Andrew	Lance Bombardier	Army	Vietnam
Foster	Charles Thomas	Private	Army	Second World War
Fuller	Eric John	Gunner	Army	Second World War
Gilbert	James	Father	Army	First World War
Gilchrist, DSM	Anthony	Captain	Army	Iraq
Giles	Harold Boyer	Lance Corporal	Army	Second World War
Grimes	Noel John	Private	Army	Vietnam
Hakewill	Arthur	Flying Officer	Air Force	Second World War
Haly	Standish	Private	Army	Second World War
Harnett	Edward	Brigadier General	Army	First World War
Harrington	Tom	Private	Army	Second World War
Harrison	William	Warrant Officer 1	Army	Second World War
Havelock Lees	John Stanley	2nd Lieutenant	Army	First World War
Henstridge	Hector David	Lieutenant	Army	Second World War
Hill	George Albert	Sergeant	Army	First World War
Hinchey	Adrian	Corporal	Army	Vietnam
Humphreys	Kevin	Lieutenant Colonel	Army	Afghanistan
Hutchinson	Douglas	Flight Lieutenant	Air Force	Second World War
Jacka, VC, MC and Bar	Albert	Captain	Army	First World War
Kear	Edmund John	Private	Army	First World War
Kelly	Andrew	Warrant Officer 2	Army	Vietnam
Kempsey	P.J.	Petty Officer	Navy	First World War
Kirby	Jack	Warrant Officer 2	Army	Vietnam

Table 25-1 Individuals nominated by the public for acts of gallantry and valour (continued)

Surname	First Name/s	Rank /Title	Service	Conflict
Knight	Leslie Gordon	Flight Lieutenant	Air Force	Second World War
Kyle	Robert	Sub Lieutenant	Navy	Vietnam
Ledwidge	Francis	Private	Army	Second World War
MacRobert	Ian	Lieutenant	Navy	Second World War
Magnussen	Barry Eugene	Lance Corporal	Army	Vietnam
Mancer	Mervyn	Leading Cook	Navy	Melbourne-Voyager collision
Margetts	Ivor	Captain	Army	First World War
Marrows	Dudley	Flight Lieutenant	Air Force	Second World War
May	Allen James	Private	Army	Vietnam
McCallum, DCM	Charles	Corporal	Army	Second World War
McColl	Neil Richard	Petty Officer	Navy	Second World War
McCourt	James	Private	Army	Second World War
McGrath	Edward	Father	Army	First World War
Meek	Bradley John	Leading Seaman	Navy	Westralia Fire
Mitchell	R.J.	Able Seaman	Navy	First World War
Moloney	Mark	Lieutenant	Army	Vietnam
Moore	William Richard	Corporal	Army	Vietnam
Morris	Thomas	Trooper	NSW Lancers	Boer War
Moxham	William	Bombardier	Army	Second World War
Murray	Richard	Private	Army	Second World War
Parker	Harold James	Sapper	Army	Second World War
Payne	Henry Godsell	Flying Officer	Air Force	Second World War
Penn	Arthur	Sergeant	Army	Vietnam
Perrott	Michael	Sub Lieutenant	Navy	Vietnam
Perry	Andrew C	Sub Lieutenant	Navy	Vietnam
Peters	Geoffrey Michael	Private	Army	Vietnam
Pockley	Brian	Captain	Army	First World War
Porter	Maurice Wilfred	Staff Sergeant	Army	Second World War
Price	Owen	Squadron Leader	Air Force	Second World War
Radnedge	Gordon	Private	Army	Second World War
Rae	Allen	Corporal	Army	Vietnam
Reid	Ian Aubrey	Private	Army	Vietnam
Reither	Herman	Driver	Army	Second World War
Roberts	Francis Adrian	Lieutenant	Army	Vietnam
Robertson	Rodney	Gunner	Army	Vietnam
Roche	William Alfred	Private	Army	Vietnam

Table 25-1 Individuals nominated by the public for acts of gallantry and valour (continued)

Surname	First Name/s	Rank /Title	Service	Conflict
Rodger	Michael G	Major	Army	Vietnam
Rodsted	James	Captain	Army	First World War
Rowland	Ronald	Private	Army	Second World War
Sharp	Gordon	2nd Lieutenant	Army	Vietnam
Shelley	Jeff	Private	Army	Second World War
Short	Nelson Alfred	Private	Army	Second World War
Sides	Fred	Pilot Officer	Air Force	Second World War
Siffleet	Leonard George	Sergeant	Army	Second World War
Simpson	Henry John	Corporal	Army	Second World War
Skinner	Edward Kenneth	Private	Army	Second World War
Smith	Alfred Greig	Captain	Army	Second World War
Sticpewich	William Hector	Warrant Officer 1	Army	Second World War
Stratford	Joseph Henry	Corporal	Army	First World War
Street	Andrew John	Sergeant	Army	Iraq
Terry	Lionel	Private	Army	Korea
Treseder	Harry	Private	Army	Second World War
Urquhart	Charlie	Private	Army	Second World War
Wagner	Charles	Lieutenant	Army	Second World War
Waygood	James D'arcy	Private	Army	Second World War
Webber	Sidney Arthur	Private	Army	Second World War
Wertheimer	Arnold Talbot	Lieutenant	Army	First World War
White	John	Captain	Army	Vietnam
Willan	Geoffrey	Lieutenant	Army	First World War
Wilmott	Alexander John	Private	Army	Second World War
Young, MM	Henry	Private	Army	First World War

Table 25-2 Groups nominated by the public for acts of gallantry and valour

Company/Battalion/Squadron/etc	Service	Conflict
Catalina A24-20	Air Force	Second World War
2/11th Infantry Battalion Battle of Crete	Army	Second World War
C Company 7th Battalion Royal Australian Regiment	Army	Vietnam
Battle of Fire Support Base Coral	Army	Vietnam
102 Field Battery — Battle of Fire Support Base Coral	Army	Vietnam
RAN Helicopter Flight Vietnam	Navy	Vietnam



ABBREVIATIONS AND ACRONYMS



General abbreviations

AASM	Australian Active Service Medal
ABC	Australian Broadcasting Corporation
ABDACOM	American–British–Dutch–Australian Command
AC	Companion of the Order of Australia
ACNB	Australian Commonwealth Naval Board
ADF	Australian Defence Force
ADMS	Assistant Director of Medical Services
ADO	Air Defence Officer
ADP	Aircraft Defence Position
AFNEI	Allied Forces Netherlands East Indies
AHC	(US) Army Helicopter Company
AIF	Australian Imperial Force
AM	Member of the Order of Australia
AO	Officer of the Order of Australia
ARVN	Army of the Republic of Vietnam
AWM	Australian War Memorial
BEM	British Empire Medal
CB	Companion of the Order of the Bath
CCCF	Commodore Commanding China Force
CCS	Combined Chiefs of Staff
CDF	Chief of Defence Force
CGM	Conspicuous Gallantry Medal
C-in-C	Commander-in-Chief
CNO	Commonwealth Navy Orders
CNS	Chief of Naval Staff
CO	Commanding Officer
COMAFV	Commander Australian Force Vietnam
CPD	<i>Commonwealth Parliamentary Debates</i>
CSC	Conspicuous Service Cross
CSM	Conspicuous Service Medal
DCM	Distinguished Conduct Medal
DFC	Distinguished Flying Cross
DHA	Directorate of Honours and Awards
DHAAT	Defence Honours and Awards Appeals Tribunal
DSC	Distinguished Service Cross
DSM	Distinguished Service Medal
DSO	Distinguished Service Order
GC	George Cross
GM	George Medal
GOQ	General Officer Quarters
H of R	House of Representatives
HMAS	Her (or His) Majesty's Australian Ship
HMIS	Her (or His) Majesty's Indian Ship
HMS	Her (or His) Majesty's Ship

HNLMS	Her (or His) Majesty's Netherlands Ship
Hon	Honourable
IJNS	Imperial Japanese Navy Ship
KCB	Knight Commander of the Order of the Bath
LACM	Leading Aircrewman
MBE	Member of the British Empire
MC	Military Cross
MG	Medal for Gallantry
MID	Mention in Despatches
MID(P)	Mention in Despatches (Posthumous)
MM	Military Medal
MP	Member of Parliament
MVO	Member of the Royal Victorian Order
NAA	National Archives of Australia
NARA	(US) National Archives and Records Administration
NCO	Non-Commissioned Officer
NOIC	Naval Officer-in-Charge
NSW	New South Wales
NZ&A	New Zealand and Australian
OAM	Medal of the Order of Australia
OBE	Officer of the Order of the British Empire
OC	Officer Commanding
OOQ	Officer of Quarters
PM&C	Department of the Prime Minister and Cabinet
POW	Prisoner of war
RAAF	Royal Australian Air Force
RAF	Royal Air Force
RAN	Royal Australian Navy
RANC	Royal Australian Naval College
RANHFV	RAN Helicopter Flight, Vietnam
RANR(S)	Royal Australian Naval Reserve (Seagoing)
Retd	Retired
RMLI	Royal Marines Light Infantry
RN	Royal Navy
RNN	Royal Netherlands Navy
RNVR	Royal Naval Volunteer Reserve
RSL	Returned & Services League
RSPCA	Royal Society for the Prevention of Cruelty to Animals
SA	South Australia
SACSEA	Supreme Allied Commander South-East Asia
Sen	Senate
SG	Star of Gallantry
SS	Steam Ship
TNA	The National Archives (United Kingdom)
TOR	Terms of Reference
TSS	Turbine Steam Ship

US	United States
USN	United States Navy
USS	United States' Ship
VC	Victoria Cross

Medal abbreviations used in this report (in the Order of Wearing)

VC	Victoria Cross
GC	George Cross
DSO**	2nd Bar to Distinguished Service Order
DSO*	Bar to Distinguished Service Order
DSO	Distinguished Service Order
DSC**	2nd Bar to Distinguished Service Cross
DSC*	Bar to Distinguished Service Cross
DSC	Distinguished Service Cross
MC**	2nd Bar to Military Cross
MC*	Bar to Military Cross
MC	Military Cross
DFC**	2nd Bar to Distinguished Flying Cross
DFC*	Bar to Distinguished Flying Cross
DFC	Distinguished Flying Cross
AFC*	Bar to Air Force Cross
AFC	Air Force Cross
CGM	Conspicuous Gallantry Medal
DCM*	Bar to Distinguished Conduct Medal
DCM	Distinguished Conduct Medal
GM*	Bar to George Medal
GM	George Medal
DSM*	Bar to Distinguished Service Medal
DSM	Distinguished Service Medal
MM***	3rd Bar to Military Medal
MM**	2nd Bar to Military Medal
MM*	Bar to Military Medal
MM	Military Medal
DFM*	Bar to Distinguished Flying Medal
DFM	Distinguished Flying Medal
AFM*	Bar to Air Force Medal
AFM	Air Force Medal
MID	Mention in Despatches



APPENDIXES



APPENDIX 1

INDIVIDUALS AND ORGANISATIONS WHO PROVIDED SUBMISSIONS TO THE INQUIRY

On 16 April 2011, in response to advertisements placed in the media giving notice of the Inquiry and calling for submissions, the Tribunal received 166 submissions from the following 125 individuals and organisations. Some individuals and organisations provided more than one submission.

Name and organisation (as applicable)

Ahearn, Mr Ian

Amos, Mr David

Bagot, Lieutenant Colonel Guy, LVO (Retd)

Ball, Major George (Retd)

Barnett, Mr Guy (former Senator)

Bell, Commander Ed, RAN (Retd)

Best, Brenton, MP, State Member for Braddon, Tasmania

Bradford, Mr John

Briggs, Rear Admiral Peter, AO, CSC, RAN (Retd), Chairman, AE Commemorative Foundation

Brodrick, Mr Lloyd

Brogan, Mr Alfred

Brown, Mr Robert

Brown, Mr Stephen

Bruce, Mr Peter, OAM

Bull, Mr Ralph Peter

Burridge, Mr John, MG

Caldwell, Mr Michael

Carlton, Mr Michael

Cazey, Mr John

Coates, Mr Neil H

Cooke-Russell, Mr Peter, National Vice President, Naval Association of Australia

Corker, Mr Norman

Crowle, Mrs J D

Department of Defence

Department of the Prime Minister and Cabinet

Dermody, Mr Bryce
 Doolan, Rear Admiral Ken, AO, RAN (Retd), National President, the Returned & Services League of Australia
 Elliott, Ms Di
 Gibson, Mr Dennis
 Goldrick, Rear Admiral James, AM CSC, RAN
 Graham, Ms Dorothy
 Grahame, Ms Didy, OBE, MVO, Secretary, The VC and GC Association
 Griffiths, Rear Admiral Guy, RAN (Retd)
 Guard, Mr Michael
 Hall, Ms Jill, MP, Federal Member for Shortland, New South Wales
 Halstead, Mr Howard, OAM, President, RAN Corvettes Association (New South Wales) Inc.
 Hamer, Mrs Barbara
 Harris, Mr Graham, Federal President, Navy League of Australia
 Herrick, Ms Pamela
 Higgins, Mr Bernard
 Hocking, Mr Philip, Secretary/Treasurer, 2/1 Australian Machine Gun Battalion Association, Victoria
 Howe, Ms Anna
 Hughes, Lieutenant Commander Anthony, RAN (Retd)
 Ingman, Mr Peter
 Ivory, Mr Garry
 Jack, Mr Michael
 Jenkins, Mr Walter
 Jobson, Mr Christopher
 Kelly, Mr Darryl, OAM
 Kercher, Mr Peter
 Knight, Lieutenant Colonel Walker
 Kubicki, Mr Richard
 Ledger, Commodore Geoffrey, DSC, AM, RAN (Retd), National President, Fleet Air Arm Association of Australia
 Legoe, Mr Tom, DSM
 Leonard, Dr Ray
 Lewis, Dr Tom, OAM
 Littlejohn, Mr Graeme

Malcolm, Mr Grant
Manning, Mr D W
Maritime Trust of Australia Inc.
Markwell, Mr Dick, BEM
Mattiske, Mr D
McFarlane, Mr Brian
McKernan, Dr Michael
McNamara, Brigadier Philip (Retd)
McWhinney, Colonel John (Retd)
Meehan, Mr Bryan
Meehan, Mr Rick, Nowra Greenwell Point Returned & Services League
Sub-Branch
Moore, Mr Brad
Moore, Ms Trudi
Mulholland, Mr James
Nikolic, Brigadier Andrew, AM, CSC (Retd)
O'Flaherty, Mrs Gloria
Parsons, Mr Philip
Parry, Mr Rick
Pelvin, Mr Richard
Plewright, Mr W B
Pople, Mr R E, Honorary Secretary, Gerringong Returned & Services
League Sub-Branch
Rankin, Mr Clement
Rankin, Ms Patricia
Rankin, Mr Peter
Raue, Lieutenant Colonel Peter (Retd)
Rawlin, Mrs Amanda
Roberts, Brigadier Chris, AM, CSC (Retd)
Roberts, Mr Chris
Sampson, Mr Ian
Sanders, Mr Terry
Satterley, Mr John
Schacht, Mr Chris (former Senator)
Shaw, Mr Peter

Shepherd, Mr Reg H
Shepherd, Mr Sid, Honorary Secretary, RAN Corvettes Association, Queensland Branch
Shinkfield, Mr Des
Sidebottom, The Hon. Sid, MP, Federal Member for Braddon, Tasmania
Silver, Mrs Lynette
Smith, Lieutenant Colonel H A, SG, MC (Retd)
Snook, Mr Graham Bruce
Spear, Mr Steve, Naval Secretary (Honours and Awards), Navy Command HQ, Portsmouth UK
Speedy, Commander Ian (Max), DSC, RANR
Stafford, Mr Brian
Stevens, Dr David
Stevens, Major General J Paul, AO (Retd)
Stewart, Mr Jack C
Stoker, Mr Dacre
Stoker, Mr John
Stoker, Mr Richard
Stokes, Mr Peter
Swinden, Commander Greg, RAN
Taylor, Mr Garry, and members of the Taylor family
Telle, Ms Sharon
Wade, Mr JJ
Waller, Commander John, RAN (Retd)
Walsh, Mr Angus OAM
Waterhouse, Mr Paul, President, Military History Society of New South Wales (Inc.)
Watson, Ms Lynda, Teacher, on behalf of Year 2, Yakamia Primary School, Albany Western Australia
White, Mr Frederick H, OAM
Wilson, Mr Graham
Wilson, Mr John
Wilson, Mrs Lorna
Wilson, Mr and Mrs Peter and Edna
Witheriff, Ms Jennifer
Woodman, Mr Gary

Wright, Ms Pattie

Yates, Mr Stanley (personal submission)

Yates, Mr Stanley, President, RAN Corvettes Association, Victoria

APPENDIX 2

TRIBUNAL HEARING DATES AND WITNESSES

Hearing days

9 November 2011 — Canberra (in camera)

Tribunal members

Chair: Mr Alan Rose AO (Chair)

Members:

- Professor David Horner AM
- Vice Admiral Don Chalmers AO (Retd)
- Brigadier Gary Bornholt AM, CSC (Retd)
- Air Commodore Mark Lax OAM, CSM (Retd)

Submitters

Department of Defence, represented by:

- Commodore Paul Kinghorne, Director General Nature of Service
- Colonel Paul Kenny, Director Special Operations and Plans, Special Operations Headquarters
- Warrant Officer Simon Hall, Command Sergeant Major, Joint Operations Command
- Mr Pat Clarke, Director Honours and Awards
- Mr Roger Lee, Head Australian Army History Unit

1 December 2011 — Canberra

Tribunal members

Chair: Mr Alan Rose AO (Chair)

Members:

- Professor David Horner AM
- Vice Admiral Don Chalmers AO (Retd)
- Brigadier Gary Bornholt AM, CSC (Retd)
- Air Commodore Mark Lax OAM, CSM (Retd)

Submitters

Department of Defence, represented by:

- Commodore Paul Kinghorne, RAN, Director General Nature of Service
- Lieutenant Colonel Brewis Atkinson, Honours and Awards — Operational, Headquarters Joint Operations Command
- Dr Christopher Clark, Royal Australian Air Force Historian, Office of Air Force History

- Mr Pat Clarke, Director Honours and Awards
- Mr Bill Houston, Historian, Australian Army History Unit
- Mr John Perryman, Senior Naval Historical Officer, RAN Sea Power Centre – Australia

Others

- Mr Christopher Jobson
- Mr Peter Rush, Assistant Secretary, Awards and Culture Branch, Department of the Prime Minister and Cabinet
- Mr Graham Wilson

2 December 2011 — Canberra

Tribunal members

Chair: Mr Alan Rose AO (Chair)

Members:

- Professor David Horner AM
- Vice Admiral Don Chalmers AO (Retd)
- Brigadier Gary Bornholt AM, CSC (Retd)
- Air Commodore Mark Lax OAM, CSM (Retd)

Submitters

- Mr David Amos
- Mr Richard Pelvin
- Fleet Air Arm Association of Australia, represented by Rear Admiral Neil Ralph, RAN (Retd), and Captain Bob Ray, RAN (Retd)
- Naval Association of Australia, represented by Mr Peter Cooke-Russell
- Rear Admiral Ken Doolan AO, RAN (Retd), National President, Returned & Services League of Australia

14 December 2011 — Melbourne

Tribunal members

Chair: Mr Alan Rose AO (Chair)

Members:

- Professor David Horner AM
- Vice Admiral Don Chalmers AO (Retd)
- Brigadier Gary Bornholt AM, CSC (Retd)
- Air Commodore Mark Lax OAM, CSM (Retd)

Submitters

- Rear Admiral Peter Briggs AO, CSC, RAN (Retd), Chairman, AE2 Commemorative Foundation
- Mr Andrew Hamer

- Dr Victor (Ray) Leonard
- Mr Des Shinkfield
- Mrs Lorna Wilson
- Ms Pattie Wright
- Corvettes Association of Victoria represented by Mr Stanley Yates, President

15 December 2011 — Melbourne

Tribunal members

Chair: Mr Alan Rose AO (Chair)

Members:

- Professor David Horner AM
- Vice Admiral Don Chalmers AO (Retd)
- Brigadier Gary Bornholt AM, CSC (Retd)
- Air Commodore Mark Lax OAM, CSM (Retd)

Submitters

- Mr Alfred Brogan
- Ms Emilia Despotovski and Mr Garry Taylor
- Commander Ian (Max) Speedy DSC, RANR
- Major General David MacLachlan AO (Retd), Victoria State President, Returned and Services League of Australia

16 December 2011 — Launceston

Tribunal members

Chair: Mr Alan Rose AO (Chair)

Members:

- Professor David Horner AM
- Vice Admiral Don Chalmers AO (Retd)
- Brigadier Gary Bornholt AM, CSC (Retd)
- Air Commodore Mark Lax OAM, CSM (Retd)

Submitters

- Mr Guy Barnett (former Senator)
- Mr Garry Ivory
- Brigadier Andrew Nikolic (Retd)
- The Hon. Sid Sidebottom, MP

8 February 2012 — Sydney

Tribunal members

Chair: Mr Alan Rose AO (Chair)

Members:

- Professor David Horner AM
- Vice Admiral Don Chalmers AO (Retd)
- Brigadier Gary Bornholt AM, CSC (Retd)
- Air Commodore Mark Lax OAM, CSM (Retd)

Submitters

- Mr Michael Carlton
- Commodore David Farthing DSC, RAN (Retd)
- Mr Clement Rankin with Mr Peter Rankin
- Mr Don Rowe, New South Wales State President, Returned & Services League of Australia
- HMAS Perth National Association, represented by Commander John King, RAN (Retd), President

9 February 2012 — Sydney

Tribunal members

Chair: Mr Alan Rose AO (Chair)

Members:

- Professor David Horner AM
- Vice Admiral Don Chalmers AO (Retd)
- Brigadier Gary Bornholt AM, CSC (Retd)
- Air Commodore Mark Lax OAM, CSM (Retd)

Submitters

- Mr Gavin Campbell
- Rear Admiral Guy Griffiths AO, DSO, DSC, RAN (Retd)
- Mr Bernard Higgins
- Mr Frank McGovern
- Mrs Amanda Rawlin
- Commander Greg Swinden, RAN
- The Corvettes Association of New South Wales represented by Mr Howard Halsted OAM, President, and Mr Bill Allen, Executive

14 February 2012 — Adelaide

Tribunal members

Chair: Mr Alan Rose AO (Chair)

Members:

- Professor David Horner AM
- Vice Admiral Don Chalmers AO (Retd)
- Brigadier Gary Bornholt AM, CSC (Retd)
- Air Commodore Mark Lax OAM, CSM (Retd)

Submitters

- Mr John Bradford
- Mr Robert Brown
- Mr Tom Legoe DSM
- Lieutenant Commander Graham Rohrsheim DSC, RAN (Retd)

15 February 2012 — Perth

Tribunal members

Chair: Mr Alan Rose AO (Chair)

Members:

- Professor David Horner AM
- Vice Admiral Don Chalmers AO (Retd)
- Brigadier Gary Bornholt AM, CSC (Retd)
- Air Commodore Mark Lax OAM, CSM (Retd)

Submitters

- Mr Grant Malcolm
- Mr John Burridge MG
- Commander Winston James, RAN (Retd)

13 March 2012 — Brisbane

Tribunal members

Chair: Mr Alan Rose AO (Chair)

Members:

- Professor David Horner AM
- Vice Admiral Don Chalmers AO (Retd)
- Brigadier Gary Bornholt AM, CSC (Retd)
- Air Commodore Mark Lax OAM, CSM (Retd)

Submitters

- Mr Robert Rankin with Mr Peter Rankin and Mr Luke Rankin

- Mr Anthony Staunton
- Mr Richard Stoker

14 March 2012 — Canberra

Tribunal members

Chair: Mr Alan Rose AO (Chair)

- Members:
- Professor David Horner AM
 - Vice Admiral Don Chalmers AO (Retd)
 - Brigadier Gary Bornholt AM, CSC (Retd)
 - Air Commodore Mark Lax OAM, CSM (Retd)

Submitters

- Rear Admiral James Goldrick AM, CSC, RAN
- Ms Jill Hall, MP
- Navy League of Australia represented by Mr Graham Harris, President
- Mr Keith Payne VC, OAM
- Mr Chris Schacht (former Senator)
- Mrs Lynette Silver

15 March 2012 — Canberra

Tribunal members

Chair: Mr Alan Rose AO (Chair)

- Members:
- Professor David Horner AM
 - Vice Admiral Don Chalmers AO (Retd)
 - Brigadier Gary Bornholt AM, CSC (Retd)
 - Air Commodore Mark Lax OAM, CSM (Retd)

Submitter

- Air Chief Marshal Angus Houston AC, AFC (Retd)

31 May 2012 — Canberra

Tribunal members

Chair: Mr Alan Rose AO (Chair)

- Members:
- Professor David Horner AM
 - Vice Admiral Don Chalmers AO (Retd)
 - Brigadier Gary Bornholt AM, CSC (Retd)
 - Air Commodore Mark Lax OAM, CSM (Retd)

Submitters

Department of Defence, represented by:

- Vice Admiral Ray Griggs AO, CSC, RAN, Chief of Navy
- Mr Mark Jenkin, acting Deputy Secretary Defence Support
- Commodore Paul Kinghorne, RAN, Director General Nature of Service
- Dr David Stevens, Director Strategic and Historical Studies Program, RAN Sea Power Centre – Australia
- Commander Greg Swinden, RAN, Deputy Director RAN Sea Power Centre – Australia
- Mrs Helen Gouzvaris — acting Director Honours and Awards
- Mr Brett Mitchell, Directorate of Honours and Awards
- Mr Tony Sillcock, Directorate of Honours and Awards

Sitting days

Tribunal members — March–June 2011

Chair: Emeritus Professor Dennis Pearce AO (Chair)

Members:

- Professor David Horner AM
- Vice Admiral Don Chalmers AO (Retd)
- Brigadier Gary Bornholt AM, CSC (Retd)
- Air Commodore Mark Lax OAM, CSM (Retd)

The Tribunal (as constituted above) sat on the following days:

- 16 March 2011
- 8 June 2011

Tribunal members — July–August 2011

Chair: Vacant

Presiding Member: Professor David Horner AM

Members:

- Vice Admiral Don Chalmers AO (Retd)
- Brigadier Gary Bornholt AM, CSC (Retd)
- Air Commodore Mark Lax OAM, CSM (Retd)

The Tribunal (as constituted above) sat on the following days:

- 20 July 2011
- 15 August 2011

Tribunal members — September 2011–December 2012

Chair: Mr Alan Rose AO (Chair)

Members:

- Professor David Horner AM
- Vice Admiral Don Chalmers AO (Retd)

- Brigadier Gary Bornholt AM, CSC (Retd)
- Air Commodore Mark Lax OAM, CSM (Retd)

The Tribunal (as constituted above) sat on the following days:

- 31 October 2011
- 7 February 2012
- 15 February 2012
- 16 February 2012
- 28 March 2012
- 29 March 2012
- 25 May 2012
- 28 May 2012
- 16 July 2012
- 17 July 2012
- 18 July 2012
- 8 August 2012
- 9 August 2012
- 27 August 2012
- 28 August 2012
- 30 August 2012
- 3 September 2012
- 15 October 2012
- 16 October 2012
- 30 October 2012
- 7 November 2012
- 8 November 2012
- 9 November 2012
- 14 November 2012

APPENDIX 3

LIST OF PERSONS FROM WHOM INFORMATION WAS SOUGHT

Former Governors-General

- The Hon. Sir William Deane AC KBE*
- The Hon. Bill Hayden AC
- The Right Reverend Dr Peter Hollingworth AC, OBE
- Major General Michael Jeffery AC, AO (Mil), CVO, MC (Retd)
- The Rt Hon. Sir Ninian Stephen KG, AK, GCMG, CGVO, KBE, QC

Former Prime Ministers

- The Rt Hon. Malcolm Fraser AC, CH
- The Hon. Robert Hawke AC*
- The Hon. John Howard OM, AC
- Mr Paul Keating*
- The Hon. Gough Whitlam AC, QC*

Former Chiefs of the Defence Force

- Admiral Christopher Barrie AC, RAN (Retd)
- General Peter Cosgrove AC, MC (Retd)
- General Peter Gration AC, OBE (Retd)
- Air Chief Marshal Angus Houston AC, AFC (Retd)

Historians

- Professor Joan Beaumont*
- Emeritus Professor Peter Dennis AM
- Professor Peter Edwards*
- Mr Ashley Ekins*
- Professor Jeffrey Grey
- Dr Richard Reid*
- Professor Bruce Scates*
- Dr Peter Stanley

* = No response received.

Authors and commentators

- Mr Peter Brune*
- Mr Les Carlyon
- Mr Michael Carlton
- Mr Peter FitzSimons
- Professor Bill Gammage
- Mr Paul Ham
- Mr Hugh Mackay
- Dr Michael McKernan

Auctioneers

- Bonhams*
- Christies
- Leonard Joel*
- Noble Numismatics*
- Spinks

Others

- Major General Peter Abigail AO (Retd), Chair of the panel that conducted the Review of Recognition for the Battle of Long Tan and RAAF Ubon*
- Rear Admiral Ken Doolan, RAN (Retd), National President, Returned & Services League of Australia
- Major General Steve Gower AO AO (Mil) (Retd), (then) Director Australian War Memorial
- Ms Clare Petre, member of the Committee of Inquiry into Defence Awards and chair of the panel that conducted the Review of Australian Honours and Awards
- Mr Noel Tanzer AC, chair of the panel that conducted the Independent Review for the end of war list — Vietnam and was a member of the Committee of Inquiry into Defence Awards*
- State presidents, Returned & Services League of Australia
- Mr Anthony Staunton, author contracted by the Tribunal to provide research papers on the Victoria Cross and Imperial gallantry awards

* = No response received

Conversations

Chair: Mr Alan Rose AO (Chair)

Members:

- Professor David Horner AM
- Vice Admiral Don Chalmers AO (Retd)
- Brigadier Gary Bornholt AM, CSC (Retd)
- Air Commodore Mark Lax OAM, CSM (Retd)

On 8 February 2012, the Tribunal (as constituted above) held a conversation in Sydney with the following authors:

- Mr Michael Carlton
- Mr Peter FitzSimons
- Mr Paul Ham

On 29 March 2012, the Tribunal (as constituted above) held a conversation in Canberra with Mr Hugh Mackay, author and social commentator.

APPENDIX 4

ADDITIONAL MATERIAL EXAMINED BY THE TRIBUNAL

Acts

Acts Interpretation Act 1901 (Cwlth)

Australia Act 1986 (Cwlth)

Defence Act 1903 (Cwlth)

Defence Legislation Amendment Act 2010 [No. 1] (Cwlth)

Flags Act 1953 (Cwlth)

Freedom of Information Act 1982 (Cwlth)

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

Nationality and Citizenship Act 1948 (Cwlth)

NSW Independent Commission Against Corruption Act 1988 (NSW)

Royal Style and Titles Act 1953 (Cwlth)

Statute of Westminster Adoption Act 1942 (Cwlth)

War Crimes Act 1946 (Cwlth)

Parliamentary debates and other Hansard transcripts

CPD, H of R, 25 June 1919, p. 10046 (William Watt).

CPD, H of R, 26 June 1919, pp. 10092–10093 (Herbert Edward Pratten).

CPD, H of R, 27 June 1919, Court martial — HMAS Australia — reduction in sentence or release.

CPD, Senate, 18 September 1919. RAN and HMAS Mutiny.

CPD, H of R, 21 November 1919. Sentences remitted — ratings on the *Australia*, release of the men.

CPD, H of R, Anzac Day Bill 1994, Monday 6 February 1995 (Mary Easson). Second reading speech.

CPD, H of R, 21 June 1999, pp. 5477–5479.

CPD, Senate, Award of Victoria Cross for Australia Bill 2001, Wednesday 4 April 2000 (Chris Schacht). Second reading speech.

CPD, H of R, Monday 30 October 2000 (Gary Hardgrave, Jill Hall). Private Members' business; Kirkpatrick, John Simpson.

CPD, Senate, 8 March 2001 p. 22817.

CPD, H of R, 27 March 2001, pp. 25781–25782 (Sid Sidebottom).

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

CPD, H of R, Defence Act Amendment (Victoria Cross) Bill 2001, Monday 4 June 2001 (Sid Sidebottom). First reading speech.

CPD, H of R, 3 June 2004 (Tony Smith).

CPD, H of R, Monday 14 March 2005 (Bruce Scott). Grievance debate, Defence: Victoria Cross.

CPD, H of R, Monday 23 May 2005 (Bruce Scott). Private Members' business, John Simpson Kirkpatrick.

CPD, H of R, 15 June 2005 p. 214.

H of R Petitions: Private John Simpson Kirkpatrick Petition, Monday 31 October 2005 (Jill Hall).

CPD, H of R, 28 February 2007 (Tony Smith).

H of R Petitions: Private John Simpson Kirkpatrick Petition, Monday 21 May 2007 (Jill Hall).

Senate Foreign Affairs, Defence and Trade Legislation Committee, Parliament of Australia, additional estimates, 23 February 2011.

CPD, H of R, 31 October 2011, pp. 12116–12119 (Sid Sidebottom).

Commonwealth of Australia Gazettes

Commonwealth of Australia Gazette, no. 5447, 18 December 1969.

Commonwealth of Australia Gazette, no. S192, 28 September 2007.

Reports

Department of the Prime Minister and Cabinet, *Review of recognition for the Battle of Long Tan*, Department of the Prime Minister and Cabinet, Barton, 2008.

Department of the Prime Minister and Cabinet, *Report of the Independent Review Panel of the end of war list — Vietnam*, Department of the Prime Minister and Cabinet, Barton, 1999.

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

Defence Honours and Awards Tribunal, *Report into Recognition for Far East Prisoners of War Who Were Killed While Escaping*, April 2010.

Unpublished Australian Government records

National Archives of Australia

NAA: A463, 1995/1596, Australian Service Medal ASM 1939 to 1945 and 1945 to 1975 and Vietnam End Of War List.

NAA: A471, 2113: RUDD Dalmorton Joseph Owendale (Able Seaman); Service Number — 3389: THOMPSON Wilfred (Ordinary Seaman); N/A: PATTERSON

Kenneth Henry (Ordinary Seaman); 55590: RUDD Leonard Thomas (Stoker); 3493: McINTOSH William George (Stoker); 3511: Unit — HMAS AUSTRALIA : date of court martial — 20 June 1919.

NAA: A471, 81212 — War Crimes — Military Tribunal Kitamira, Kawakami, Suzuki held Rabaul 25, 27, 28 July 1946.

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

NAA: A705, 163/178/287 — Will Phillip Ernest (Corporal) Service no. 9030, Casualty, Repatriation place HMAS *Perth*, 1 March 1942.

NAA: A816, 37/301/267, Attachment 7 — ABDACOM, An official account of events in the South-West Pacific Command Jan to Feb 1942.

NAA: A816, 66/301/5 — Procedure for Honours and awards in time of war. (Awards to Australian personnel recommended by UK Government.)

NAA: A816, 66/301/60 — Posthumous awards for prisoners of war killed while attempting to escape.

NAA: A1068, IC47/35/5/3 — Decorations, Dutch Awards to Australian nationals Waller Capt HML (Deceased).

NAA: A1217, 7/59 — Netherlands East Indies Royle (part series, Foreign awards for Australians).

NAA: A1217, 7/63 — USA Collins & Dechaineaux (part series, Foreign awards for Australians).

NAA: A1217, 7/86 — Netherlands East Indies — Men of 'Perth', Burgess Rawson and others (part series, Foreign awards for Australians).

NAA: A1217, 7/116 — Dutch Waller (part series, Foreign awards for Australians).

NAA: A1608, R51/1/6 — War section, HMAS *Perth*.

NAA: A1813, 38/202/36 — RANHFV Honours and Awards, held in RANHFV Box File, RAN Sea Power Centre – Australia.

NAA: A1838, 401/3/3/4 — East Indies — Search for survivors of HMAS *Perth*.

NAA: A1838, 401/3/3/5 — East Indies — Search for survivors of HMAS *Perth*.

NAA: A1838, TS661/2/2/1 Part 1 — Submissions to Cabinet — Committee on Foreign Affairs and Defence 1963–1971.

NAA: A2031, 111/1939, 111/1939 to 113/1939 — Minutes of Defence Committee: Agenda Numbers — 70/1939, 71/1939 and 77/1939 and Supplement: date of meeting — 23 November 1939.

NAA: A2673, vol. 9 — War Cabinet Minutes — Minute numbers 1456–1643 30 Oct 1941 to 30 Dec 1941.

NAA: A2676, 1113 — Attachment 1 — War Cabinet Minute no. 1113 (A) (ii) — HMAS *Perth*.

NAA: A2676, 1417 — Attachment 1 — War Cabinet Minutes no. 1417A (ii) Fire on HMAS *Perth*.

NAA: A2880, 5/5/4 — Honours and awards — gallantry awards (Operational) — Borneo Territories — Military Cross for Second Lieutenant Douglas Roy BYERS and Lieutenant Patrick Wald BEALE — Military Medal for Private Lawrence JACKSON; Lance Corporal Trevor William BYNG Mentioned-in-Despatches.

NAA: A2926, A18 — Aircraftsman William Simpson McAloney.

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

NAA A3211, 1971/2712 — Presentation to the Australian War Memorial of medals and war relics belonging to the late Private John Simpson Kirkpatrick (The man with the donkey).

NAA: A3300, 219 — Far East policy (US) — ABDA Council — ANZAC area — Part 1 — [1941 file — yellow tab].

NAA: A3978, DAVIES, R I — Officer's (RAN) personal record.

NAA: A3978, HAMER, D J — Officer's (RAN) personal record.

NAA: A3978, RANKIN, R W — Officer's (RAN) personal record.

NAA: A3978, WALLER H M L — Officer's (RAN) personal record.

NAA: A4624, Perth Ledger — Ledger of HMAS Perth quarter ended 31/03/1942.

NAA: A5954, 105/1 — War Cabinet Agenda & Minutes 1942–1943 [incomplete].

NAA: A5954, 278/15 — War Cabinet Agendum No 467/1942. Statement of urgent defence measures under War Cabinet Minutes No 1573 & 2144.

NAA: A5954, 349/1 — Prime Minister's war communiqués. South-East Pacific Area 16 March – 21 April 1942.

NAA: A5954, 518/3 — HMAS *Perth*. Search for Survivors. 29/5/46 – 21/8/46.

NAA: A5954, 518/9 — War Cabinet Agendum no. 382/1941. Disposition of Australian Destroyer Flotilla — proposed service in Eastern Theatre, 05/11/1941 – 03/12/1941.

NAA: A5954, 518/14 — Loss of HMAS *Yarra* 22–24/3/42.

NAA: A5954, 518/18 — Naval Operations — Report by Australian Commonwealth Naval Board on loss of HMAS *Armidale* 4/12/42 – 12/1/43.

NAA: A5954, 552/1 — Strategical appreciation in Far East following outbreak of war with Japan 1941 — Formation of American–British–Dutch–Australian area.

NAA: A5954, 563/3 — Policy and Strategy for conduct of the war in the Pacific. File no. 1 Establishment of the ANZAC Naval Area 29/12/1941 – 05/02/1942.

NAA: A5954, 563/4 — Policy and Strategy for conduct of the war in the Pacific. File no. 2 Extension of area and command. Australia — New Zealand proposals. Directive to Supreme Commander 08/02/1942 – 11/03/1942.

NAA: A5954, 807/2 — War Cabinet Minutes [Original] Vol. 10, Meetings 31 Dec 1941 – 24 Feb 1942. Min. no. 1644–1929.

NAA: A5954, 808/1 — War Cabinet Minutes [Original] Vol. 11, Meetings 28 Feb 1942 – 29 Jul 1942. Min. no. 1930–2292.

NAA: A6769, DAVIES R I — Record of Service (Officers).

NAA: A6769, HAMER D J — Record of Service (Officers).

NAA: A6769, RANKIN R W — Record of Service (Officers).

NAA: A6769, SMITH F E — Record of Service (Officers).

NAA: A6769, STOKER H H G D — Record of Service (Officers).

NAA: A6769, WALLER H M L — Record of Service (Officers).

NAA: A6770, BUSH G J, Service record.

NAA: A6770, EDGAR W H, Service record.

NAA: A6770, EMMS F B, Service record.

NAA: A6770, GILLARD H J, Service record.

NAA: A6770, KIMMINS G G, Service record.

NAA: A6770, LLOYD G J F, Service record.

NAA: A6770, NEWLAND L T, Service record.

NAA: A6770, OLIVER J R, Service record.

NAA: A6770, SHEEAN E, Service record.

NAA: A6770, STAPLES G E, Service record.

NAA: A6770, RUDD D J O, Service record.

NAA: A6770, SHIPP N E, Service record

NAA: A6770, TAYLOR R, Service record.

NAA: A7112, 2 — Reports from contact and enquiry teams part 2 (investigations into fate of personnel of HMAS *Perth*).

NAA: A9300, Middleton Rawdon Hume — Service record.

NAA: A10779, 4, Figures for June 1969, Nominal roles and details of operations No. 9 Squadron Vietnam 1969–1970’.

NAA: B883, VX24597 — Service record, L C Matthews.

NAA: B883, VX52128 — Service record, A N Cleary.

NAA: B2455, Service record — Adams, Arthur .

NAA: B2455, Service record — Conrick, Horatio Victor Patrick.

NAA: B884, N280612, Service record — Corey, Ernest Albert.

NAA: B2455, Service record — Gillies, J W.

NAA: B2455, Service record — Goldsmith, Frederick.

NAA: B2455, Service record, Jeffries, Charles Frederick.

NAA: B2455, Service record, Loch, Frederick Sydney.

NAA: B2455, Service record, Mahney, Maurice William.

NAA: B2455, Service record, Menhennett, Percy Grove.

NAA: B2455, Service record, Pratley, John.

NAA: B2455, Service record, Robertson, William.

NAA: B2455, Service record, Sharples, Samuel.

NAA: B2455, Service record, Simpson, John.

NAA: B6121, 66A — Lingayen (Philippines) Musketeer (Mike 1) Task Force 74.1 (Fire Support) Action Reports, RAN Units HMAS *Australia*, *Shropshire*, *Arunta*, *Warramunga*.

NAA: B6121, 20N — RAN personnel serving with RN killed and POW (includes POWs medical organisations in RAN ships, POWs RAN rescued from Japanese camps, POWs RAN deceased prison camps Burma–Siam. Contains photos of some crew members of HMAS *Perth*.

NAA: B6121, 52 — Battle of the Java Sea and Sunda Strait.

NAA: B6121, 52M — The Allied Naval Command and campaign in the Far East 1941 to the abandonment of the Malay Archipelago 1942.

NAA: B6121, 52R — HMAS *Perth* and USS *Houston* — loss of — Japanese reports.

NAA: B6121, 52S — USS *Houston* — Action reports, Battles of Java Sea & Sunda Strait.

NAA: B6121, 52T — HMAS *Perth* — Loss of Willis, Harper, Lowe, reports 1945.

NAA: B6121, 337 — Columbo (sic) Notes.

NAA: B6121/3, 52T — HMAS *Perth* — Loss of Willis, Harper, Lowe reports.

NAA: B6121/3, 52 — Battle of the Java Sea and Sunda Strait.

NAA: CP979/2, 3637 — Waller, Hector Macdonald Laws.

NAA: CP979/2, 6321 — Rudd, Dalmorton Joseph Owendale Service # 3389 — Application for War Gratuity.

NAA: MP 124/6, No 528/201/79 — Confirmation report of Australian volunteers at Zeebrugge Raid — Extract from 104th report of the Naval Representative, 30 April 1918.

NAA: MP138/1, 603/269/166 — HMAS *Perth* — Captain HML Waller in command.

NAA: MP150/1, 546/203/260 — HMAS *Perth* requests missing CNO's [Commonwealth Navy Orders] numbers 252–267/40.

NAA: MP150/1, 567/201/17 — Reports of interrogation of ex-POWs regarding survivors from HMAS *Perth*.

NAA: MP150/1, 567/201/37 — POWs from HMAS *Perth* (Dundon & MacDonald).

NAA: MP150/1, 567/201/61 — List of prisoners of war from HMAS *Perth* who died in camps; List of POWs received from Manila.

NAA: MP150/1, 567/201/106 — Report on survivors from HMAS *Perth*.

NAA: MP150/1, 635/201/1619 — HMAS *Perth* presentation.

NAA: MP151/1, 428/204/540 — Personnel missing from HMAS *Perth* letters to next of kin.

NAA: MP151/1, 429/201/420 — Missing personnel — HMAS *Perth* & other ships 1941–1946.

NAA: MP151/1, 429/201/427 HMAS *Yarra*.

NAA: MP151/1, 429/201/716 — HMAS *Perth* personnel known to be POW 1943.

NAA: MP151/1, 429/201/756 — Australian POWs in Japanese hands cable from International Red Cross Commission Geneva (includes members of *Perth*).

NAA: MP151/1, 429/201/892 — List of Australian POW from International Red Cross Committee Geneva (ex-HMAS *Perth*, ex-the Japanese Transport *Rakuyo Maru*, which was sunk on 12 September 1944).

NAA: MP151/1, 429/201/932 — HMAS *Perth* casualties 1046.

NAA: MP151/1, 429/201/943 — HMAS *Armidale* casualty list.

NAA: MP151/1, 429/204/449 — 140 RAN officers & ratings in Thailand (survivor reports HMAS *Perth*) taken prisoners of war sent to Thailand.

NAA: MP151/1, 429/204/478 — Release of POW ex-HMAS *Perth* 1945.

NAA: MP151/1, 429/204/512 — HMAS *Perth* — survivors (recorded by Yeoman Signals JR Willis) 1945.

NAA: MP151, 429/204/526 — Canteen assistant A A Hawkins — ex POW — ex-HMAS *Perth*.

NAA: MP151/1, 429/204/539 — Presumption of death of personnel (missing) ex-HMAS *Perth*.

NAA: MP151/1, 429/204/540 — Personnel missing from HMAS *Perth* letters to next of kin.

NAA: MP151/1, 429/205/67 — HMAS *Yarra* — Personnel.

NAA: MP151/1, 429/205/2 HMAS *Yarra* — POs [Petty Officers] and men rescued.

NAA: MP151/1, 448/201/1320 — Decorations for the Battle of Matapan.

NAA: MP151/1, 448/201/2005 — Awards to Personnel of the RAN.

NAA: MP 151/1, 603/269/31 — HMAS *Perth* attachment to royal Navy.

NAA: MP 472/1, 16/14/9942 — Submarine *AE2* — Employment of offer and acceptance by Admiralty 1914.

NAA: MP 472/1, 5/19/2520 — Extract — Submarine *AE2* — Report of loss in operations at Dardanelles.

NAA: MP692/1, 349/52/422 — Death of Leading Cook (O) Francis Bassett Emms, ON [Official Number] 18984 due to enemy action whilst serving on HMAS *Kara Kara*.

NAA: MP1049/5, 1944/2/199 — Recommendation for awards to personnel on HMAS *Perth* during last action.

NAA: MP1049/5, 1951/2/96 — HMAS *Macquarie* search for HMAS *Perth* survivors.

NAA: MP 1049/5, 1953/2/5 — The Royal Australian Navy in Malayan and Dutch East Indies waters.

NAA: MP1049/5, 1804/2/44 — [South-West Pacific Area] — ABDA organisation 1942.

NAA: MP1049/5, 2026/12/358 — Introduction of convoy system ABDA Area 1942–1942.

NAA: MP 1049/5, 1968/2/633 — Operations HMAS reports.

NAA: MP1049/5, 2026/12/358 — Instruction of convoy system ABDA Area 1942.

NAA: MP1185/1, 2026/9/336 — Loss of *Armidale*.

NAA: MP1185/8 — Loss of HMS *Exeter* etc. report by Lt Cdr G T Cooper RN.

NAA: MP 1185/8, 1932/2/200 — Loss of HMAS *Perth* (Naval Board Report Oct 1945 — Harper report).

NAA: MP1185/8, 1932/2,214 — Reports of Losses of Ships: HMS *Grasshopper*, HMS *Rahman*, HMAS *Yarra*, HMS *Anking*, HM Tanker *Francol*, MNS 51, HMS *Stronghold*, HMS *Wo Kwang*.

NAA: MP1185/8, 1932/2/238 — Proposed publication of despatches on Battle of Java Sea.

NAA: MP1185/8, 1937/2/126 — South-West Pacific Area — ABDA Organisation.

NAA: MP1185/8, 1937/2/134 — ABDACOM organisation intelligence etc.

NAA: MP1185, 2026/7/457 — China Force.

NAA: MP1185/9, 429/201/1569 — Survivors — Loss of HMAS *Perth* and *Yarra* March 1942.

NAA: MP1185/9, 567/201/82 — Survivors of HMAS *Perth* — Narrative of experience as prisoners of war (in Java, Burma and Siam) Author Lieutenant-Commander (S) RFM Lowe.

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APPENDIX 5

ESTABLISHMENT OF AUSTRALIAN HONOURS AND AWARDS — KEY DATES

- 14 February 1975 — Her Majesty signed the Letters Patent for the Order of Australia. The new order consisted of a Civil Division and a Military Division with the following appointments: Companion (AC), Officer (AO), and Member (AM). The National Medal and the Bravery Decorations (Cross of Valour, Star of Courage, Bravery Medal and the commendation for Brave Conduct) were also created.
- 24 May 1976 — Her Majesty signed new Letters Patent establishing a Knight/Dame of the Order of Australia (AK/AD), a Medal of the Order (OAM), and changing the name of the Civil Division to the General Division.
- 20 April 1982 — Her Majesty signed the Letters Patent for Defence Force Service Awards, which include the Defence Force Service Medal (DFSM), the Reserve Force Decoration (RFD) and the Reserve Force Medal (RFM).
- 26 January 1986 — the Hawke government announced the removal of the AK/AD from the Order of Australia awards.
- 15 January 1991 — Her Majesty signed the Letters Patent for the Victoria Cross for Australia, the Gallantry and Distinguished Service Decorations, and the Meritorious Unit Citation.
- 19 June 1992 — Prime Minister Paul Keating advised Her Majesty that Australia would no longer make recommendations for Imperial awards. This advice was accepted by the Queen. As a consequence on the advice of the British Government, Australian eligibility for Imperial awards was removed from all of the relevant Statutes, Letters Patent, Regulations, etc.

APPENDIX 6

VALOUR, GALLANTRY AND DISTINGUISHED SERVICE CRITERIA

Table A6-1 First level of gallantry and distinguished service awards¹

	Victoria Cross (VC)	Victoria Cross for Australia (VC)	Remarks
	Imperial (to 1975)	Australian	
Criteria used	In the presence of the enemy	In the presence of the enemy	'In the face of the enemy' is an often used phrase that is not mentioned in any official documents. 'Presence' could be taken to mean 'in combat with, in close proximity to'
	Perform some signal act of valour or devotion to their country	Perform acts of the most conspicuous gallantry	
	Most conspicuous bravery (1920)	Perform acts of the most conspicuous daring	
		Pre-eminent acts of valour	
	Daring or pre-eminent act of valour or self-sacrifice or extreme devotion to duty (1920)	Extreme devotion to duty	
	Most conspicuous gallantry of the highest order (1953)	Acts of self-sacrifice	
Posthumous award	YES	YES	Where the individual is killed in the action or dies subsequently from any cause, before formal approval has been given to the award proposed, then it is deemed to be posthumous. If the recipient dies after an award has been approved, but before it is gazetted the award is not posthumous. In such a case the Gazette entry would show 'since deceased'
Quota	NO	NO	
Witness	The British Army (and by extension the Australian Army) promulgated instructions requiring three witness statements, but that requirement did not apply in the Navy or Air Force	At least three independent signed eyewitness statements	The Royal Warrant for the VC does not stipulate a requirement for three witnesses
Awards to Australians	96 up to 1975	3 since 1975	

¹ The first level are the highest level of awards available.

Table A6-2 Second level of gallantry and distinguished service awards

	Distinguished Service Order (DSO)	Distinguished Conduct Medal (DCM) (Army)	Conspicuous Gallantry Medal (CGM) [Flying]	Conspicuous Gallantry Medal (CGM) (Navy)	Star of Gallantry (SG)	Distinguished Service Cross (DSC)	Remarks
	Imperial (to 1975)	Imperial (to 1975)	Imperial (to 1975)	Imperial (to 1975)	Australian	Australian	
Criteria used	Conspicuous gallantry and leadership	Distinguished conduct in action	Acts of conspicuous gallantry	Acts of pre-eminent bravery	Acts of great heroism	Distinguished command	
	Under fire or under conditions equivalent to 'services' in actual combat with the enemy For distinguished 'services in action'	In the field	While flying	In action with the enemy	Acts of conspicuous gallantry	Distinguished leadership	For British Awards - 'Services in action' - means services under fire, distinguished individual services in connection with air raids, bombardments or other enemy action, which at the time produces conditions equivalent to services in actual combat
	Bravery of a high standard	In active operations against the enemy	In action	In warlike operations (*)			(*) Replaced 'in action' as the criteria in 2011
	If possible a degree of leadership should also be displayed	In circumstances of great peril					
Posthumous award	NO	NO	NO	NO	YES	YES	
Quota	NO	NO	NO	NO	NO	NO	ADF quota of one per 200 per six months was removed by COSC decision 2007, promulgated 2012
Witness	NO	NO	NO	NO	NO	NO	

ADF = Australian Defence Force; COSC = Chiefs of Staff Committee

Table A6-3 Third level of gallantry and distinguished service awards

Period	Military Cross (MC) (Army)	Distinguished Service Cross (DSC) (Navy)	Military Medal (MM) (Army)	Distinguished Service Medal (DSM) (Navy)	Distinguished Flying Cross (DFC)	Distinguished Flying Medal (DFM)	Medal for Gallantry (MG)	Distinguished Service Medal (DSM)	Remarks
	Imperial (to 1975)	Imperial (to 1975)	Imperial (to 1975)	Imperial (to 1975)	Imperial (to 1975)	Imperial (to 1975)	Australian	Australian	
Criteria used	Gallant and distinguished services	Conspicuous gallantry	For acts of gallantry and devotion to duty in action	Set an example of bravery and resource	Acts of exceptional valour, courage or devotion to duty	Acts of exceptional valour, courage or devotion to duty	Acts of gallantry	Distinguished leadership only	
	In action against the enemy	Devotion to duty	For continuous gallantry during a specified period of active operations	Under fire	Whilst flying	Whilst flying	In action	In warlike operations (*)	(*) Replaced 'In action' as the criteria in 2011
		Valuable services in action that did not meet the requirements for the award of the DSO	Under fire	Without performing acts of such pre-eminence as would render them eligible for CGM	In active operations against the enemy	In active operations against the enemy	In hazardous circumstances		
Posthumous award	NO	NO	NO	NO	NO	NO	YES	YES	
Quota	NO	NO	NO	NO	NO	NO	NO	NO	ADF quota of one per 200 per six months was removed by COSC decision 2007, promulgated 2012
Witness	NO	NO	NO	NO	NO	NO	NO	NO	

ADF = Australian Defence Force; CGM = Conspicuous Gallantry Medal; COSC = Chiefs of Staff Committee; DSO = Distinguished Service Order

Table A6-4 Fourth level of gallantry and distinguished service awards

	Mention in Despatches (MID)	Commendation for Gallantry	Commendation for Distinguished Service	Remarks
Period	Imperial (to 1975)	Australian	Australian	
Criteria used	For an act of bravery	Other acts of gallantry	Distinguished performance of duties	
	For continuous good work over a long period	Considered worthy of recognition		
	Only in an operational area	In action	In warlike operations	
Posthumous award	YES	YES	YES	
Quota	NO	NO	NO	ADF quota of one per 100 per six months was removed by COSC decision 2007, promulgated 2012
Witness	NO	NO	NO	
Other notes	For all services and ranks	For ADF all services and ranks	For ADF all services and ranks	

ADF = Australian Defence Force; COSC = Chiefs of Staff Committee

APPENDIX 7

IMPERIAL GALLANTRY AWARDS TO AUSTRALIAN FORCES

By Anthony Staunton

Nearly 20,000 members of the Australian forces were awarded Imperial operational gallantry medals between the start of Boer War and the end of the Vietnam War. While the number of awards to Australian forces is available, it is not possible to obtain an exact count of the number of awards made to Australians serving with other British and Commonwealth forces. The focus of the tables in this paper is on the nationality of the force rather than the nationality of the individual.

Various published and online resources list the number of Australians awarded specific decorations. The most documented award is the Victoria Cross (VC), with 96 awards to Australians between 1900 and 1969. This figure includes five Australians who were members of the British and South African forces. Since they were not serving with the Australian forces they are not included in the tables in this paper. The operational gallantry award with the smallest number of recipients is the Conspicuous Gallantry Medal (CGM), with just one Navy recipient and eleven Air Force recipients. The medal of the CGM is the same for both the Navy and Air Force, but each service has its own ribbon.

There is general agreement on the number of awards of the VC and CGM, but there are different numbers cited for other awards in various publications. The tables in this paper include, as Australian awards, the medals awarded to the men of the Second World War Papuan and New Guinea Infantry Battalions, which were part of the Australian Military Forces during the Second World War. The database from which the tables of awards were compiled was created in the 1990s, and I confirmed every award to the Australian forces from the South African War to the Vietnam War by checking each award in the *London Gazette* and/or the *Commonwealth of Australia Gazette*. Information on every Imperial gallantry award to every member of the Australian forces is available online at the Australian War Memorial website in the section titled 'Honours and awards'.

With one exception, all Imperial orders, decorations and medals to Australian forces were promulgated in the *London Gazette*. The exception is the Distinguished Conduct Medal (DCM) to Company Sergeant Major (CSM) James John Walker of the 1st Queensland Mounted Infantry in the South African War. The DCM was created in 1854, during the Crimean War, but it was only at the end of the 19th century that the practice of promulgating DCM awards in the *London Gazette* became standard. The names of CSM Walker and a British soldier were published in British Army Orders and the medals were presented to each man, but it would appear that it was an oversight that neither name was gazetted.

Names published in the *London Gazette* were generally republished in the *Commonwealth of Australia Gazette*, with the major exceptions of the Boer War and the early part of the Second World War. The governor-general of Australia had

authority to approve Mentions in Despatches (MIDs) for the South-West Pacific Area in the Second World War, and for the Vietnam War. With some exceptions, the names were generally published in both gazettes. More than 80% of awards and MIDs to the Australian forces appear in both the *London Gazette* and the *Commonwealth of Australia Gazette*.

The operational gallantry medal most frequently awarded to Australians is the Military Medal (MM), with more than 11,000 recipients between the First World War and the Vietnam War. Various sources have published different numbers for the MM in the world wars. Australian forces were awarded 9,932 MMs in the First World War, which excludes 23 duplicate MM awards; of which, only 21 were officially cancelled. For the Second World War there were 1,001 MM awards, 5 bars to the Army and 5 MMs to the RAAF.

In confirming every award to the Australian forces from the South African War to the Vietnam War, it was noted that the some hundreds of entries in the series AWM192 'Index to recommendations of honours and awards' stated that MIDs had been promulgated in the *London Gazette* on 23 June 1942. Most of these MIDs were actually gazetted in 1941, and were included in a consolidated media release to the Australian media in mid-1942. The date, 23 June 1942, was the date of the belated media release.

Distinguished and meritorious service awards for gallantry

Many honours systems have individual awards that recognise more than one type of service. While the Victoria Cross is only awarded for gallantry in action, the most prestigious French award, the Legion of Honour, rewards gallantry, distinguished and meritorious service, and long service; it is also a commemorative medal. French and Allied First World War veterans, still living in 1998, who served in France were honoured with the Legion of Honour. Some Australian Second World War veterans with service in France have since been bestowed with the award.

Between 1945 and 1955, Australia accepted 92 US Bronze Stars to Australian service personnel. More have been accepted since 1996, when the policy on accepting and wearing foreign awards was updated, but the exact number is unknown since the Australian honours system does not publish the names of these recipients. The Bronze Star is a similar level award to the MID and the Australian Commendations for Gallantry and Distinguished Service. The majority of these awards were for distinguished and meritorious service. Both the Legion of Honour and Bronze Star are highly regarded in the veteran community. Sadly, the MID (which, like the French and US awards, was more often awarded for meritorious service than for gallantry) sometimes incurs the derogatory comment 'Only an MID'.

The George Cross (GC) and the George Medal (GM) are for gallantry in non-operational actions, and have been awarded in both war and peacetime. Eight of the nine Australian GC awards to the Australian forces were for the Second World War. The GM was awarded for the Second World War, the Korean War, the Malayan Emergency and the Vietnam War, as well as peacetime in Australia and overseas.

The Distinguished Service Order (DSO) is awarded for distinguished service in operational areas. In the South African War the majority of awards were to junior officers, but in the two world wars, the majority of DSOs were to senior officers, with some awards to junior officers for gallantry. By the Vietnam War this practice of awarding the DSO to junior officers for gallantry had ceased, and was officially abolished in 1997.

The Air Force Cross (AFC) and the Air Force Medal (AFM) were instituted in June 1918, shortly after the creation of the Royal Air Force to reward gallantry in non-operational missions, and meritorious service on flying duties. Between 1919 and 1991, 415 AFC awards plus 8 bars and 30 AFM awards plus 2 bars were awarded to Australian airmen. However, the following tables only list awards for the world wars, and for recipients listed on operational lists for post-war conflicts.

Posthumous awards

In 1979 the Queen approved the proposal that operational gallantry awards could be awarded posthumously. Until then, a recipient had to be living when the recommendation for an award was being raised. This meant that a person killed as a result of a gallant act could only be recommended for the VC or an MID. However, a recommendation could be raised for a living recipient, even if he subsequently died of wounds. Between the First World War and the Vietnam War, 941 gallantry awards were awarded to members of Australian forces who died before the award was gazetted. Tables A7-6 and A7-7 give a breakdown of these 'posthumous' awards.

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Table A7-1 Imperial awards to Australian forces

Medal	Army	RAN	RAAF	Total
VC	89		2	91
GC	2	4		6
DSO**	1			1
DSO*	61	3	4	68
DSO	884	25	83	992
DSC**		3		3
DSC*		11		11
DSC		172		172
MC**	4			4
MC*	187			187
MC	2,954		7	2,961
DFC**	2		2	4
DFC*	5		138	143
DFC	75	7	2,290	2,372
AFC*			1	1
AFC	14		180	194
CGM		1	11	12
DCM*	30			30
DCM	2,072		2	2,074
GM*		3		3
GM	16	9	22	47
DSM*		2		2
DSM		182		182
MM***	1			1
MM**	15			15
MM*	496			496
MM	11,066		6	11,072
DFM*			2	2
DFM			435	435
AFM*	2			2
AFM	2		17	19
Total	17,978	422	3,202	21,602

AFC = Air Force Cross; AFM = Air Force Medal; CGM = Conspicuous Gallantry Medal; DCM = Distinguished Conduct Medal; DFC = Distinguished Flying Cross; DFM = Distinguished Flying Medal; DSM = Distinguished Service Medal; DSO = Distinguished Service Order; GC = George Cross; GM = George Medal; MC = Military Cross; MM = Military Medal; VC = Victoria Cross

* indicates second or subsequent award for medal recipients but not for multiple Mentions in Despatches

Notes:

GC and GM — These awards are for gallantry in non-operational actions and have been awarded in both war and peacetime. Eight of the nine GC awards to the Australian forces were for the Second World War. The GM awards listed were for the Second World War, the Korean War, the Malayan Emergency and the Vietnam War.

DSO — In the two world wars the DSO was sometimes awarded to junior officers for gallantry but by the Vietnam War this practice had ceased and was officially abolished in 1997.

AFC and AFM — These awards were instituted in June 1918 shortly after the creation of the Royal Air Force to reward gallantry in non-operational missions and meritorious service on flying duties. Between 1919 and 1991, 415 AFC awards plus eight bars and 30 AFM awards plus two bars were awarded to Australian airmen. Listed above are the awards for the world wars, the Korean War and one award for the Malayan Emergency. There were no AFC or AFM awards on operational lists for the Vietnam War.

Table A7-2 Imperial gallantry awards to Australian Forces — awards made for actions during conflict

Award	Total	Confrontation	Emergency	Korean War	Boer War	Vietnam War	First World War	Second World War
VC	91				5	4	63	19
DSC**	3			1				2
DSC*	11			1				10
DSC	172	1		11		9	1	150
MC**	4						4	
MC*	187			1		1	170	15
MC	2,961	3	2	26		54	2,369	507
DFC**	4		1				2	1
DFC*	143		4	6		3	5	125
DFC	2,372		10	41		78	62	2,181
CGM	12					1		11
DCM*	30			1		1	28	
DCM	2,074			4	62	41	1,764	203
DSM*	2							2
DSM	182			3		4	17	158
MM***	1						1	
MM**	15						15	
MM*	496			1			490	5
MM	11,072	2	4	44		84	9,932	1006
DFM*	2							2
DFM	435		1	18		10		406
MID	15,683	8	69	292	376	608	5,726	8,604
Total	35,952	14	91	450	443	898	20,649	13,407

CGM = Conspicuous Gallantry Medal; DCM = Distinguished Conduct Medal; DFC = Distinguished Flying Cross; DFM = Distinguished Flying Medal; DSM = Distinguished Service Medal; MC = Military Cross; MID = Mention in Despatches; MM = Military Medal; VC = Victoria Cross

* indicates second or subsequent award for medal recipients but not for multiple MIDs.

Notes:

Between the Boer War and the Vietnam War the only operational gallantry awards were for the two world wars and five conflicts listed.

The VC and medals listed were operational gallantry medals. Listed separately are distinguished and meritorious service awards, which were sometimes awarded for gallantry. In the two world wars the DSO was sometimes awarded to junior officers for gallantry but by the Vietnam War this practice had ceased and was officially abolished in 1997.

VC — Between 1900 and 1969, 96 Australians received the VC including five serving as members of the British and South African forces. This list only includes the 91 who were members of the Australian forces when awarded the VC.

Awards to the Australian Flying Corps in the First World War are included in Army totals.

MID — figures included for comparison but majority of awards were for distinguished and meritorious service.

Table A7-2A Imperial gallantry awards to Australian Forces — Australian Army

Medal	Boer War	First World War	Second World War	Korean War	Malayan Emergency	Confrontation	Vietnam War	Total
VC	5	63	17				4	89
MC**		4						4
MC*		170	15	1			1	187
MC		2,369	500	26	2	3	54	2,954
DFC**		2						2
DFC*		5						5
DFC		62	1				12	75
DCM*		28		1			1	30
DCM	62	1,764	201	4			41	2,072
MM***		1						1
MM**		15						15
MM*		490	5	1				496
MM		9,932	1,001	44	4	2	83	11,066
MID	376	5,691	6,199	110	35	8	423	12,842
Total	443	20,596	7,939	187	41	13	619	29,838

DCM = Distinguished Conduct Medal; DFC = Distinguished Flying Cross; MC = Military Cross; MID = Mention in Despatches; MM = Military Medal; VC = Victoria Cross

* indicates second or subsequent award for medal recipients but not for multiple MID's.

Table A7-2B Imperial gallantry awards to Australian Forces — Royal Australian Navy

Medal	First World War	Second World War	Korean War	Confrontation	Vietnam War	Total
DSC**		2	1			3
DSC*		10	1			11
DSC	1	150	11	1	9	172
DFC		1			6	7
CGM		1				1
DSM*		2				2
DSM	17	158	3		4	182
MID	35	602	32		48	717
Total	53	926	48	1	67	1,095

CGM = Conspicuous Gallantry Medal; DFC = Distinguished Flying Cross; DSC = Distinguished Service Cross; DSM = Distinguished Service Medal; MM = Military Medal; MID = Mention in Despatches

* indicates second or subsequent award for medal recipients but not for multiple MID's.

Table A7-2C Imperial gallantry awards to Australian Forces — Royal Australian Air Force

Medal	Second World War	Korean War	Malayan Emergency	Vietnam War	Total
VC	2				2
MC	7				7
DFC**	1		1		2
DFC*	125	6	4	3	138
DFC	2179	41	10	60	2290
CGM	10			1	11
DCM	2				2
MM	5			1	6
DFM*	2				2
DFM	406	18	1	10	435
MID	1803	150	34	137	2124
Total	4542	215	50	212	5019

CGM = Conspicuous Gallantry Medal; DCM = Distinguished Conduct Medal; DFC = Distinguished Flying Cross; DFM = Distinguished Flying Medal; DSM = Distinguished Service Medal; MC = Military Cross; MM = Military Medal; MID = Mention in Despatches; VC = Victoria Cross

* indicates second or subsequent award for medal recipients but not for multiple MID's.

Table A7-3 Imperial gallantry awards to Australian Forces by Service

Medal	Army	RAAF	RAN	Total
VC	89	2		91
DSC**			3	3
DSC*			11	11
DSC			172	172
MC**	4			4
MC*	187			187
MC	2,954	7		2,961
DFC**	2	2		4
DFC*	5	138		143
DFC	75	2,290	7	2,372
CGM		11	1	12
DCM*	30			30
DCM	2,072	2		2,074
DSM*			2	2
DSM			182	182
MM***	1			1
MM**	15			15
MM*	496			496
MM	11,066	6		11,072
DFM*		2		2
DFM		435		435
MID	12,842	2,124	717	15,683
Total	29,838	5,019	1,095	35,952

CGM = Conspicuous Gallantry Medal; DCM = Distinguished Conduct Medal; DFC = Distinguished Flying Cross; DFM = Distinguished Flying Medal; DSC = Distinguished Service Cross; DSM = Distinguished Service Medal; MC = Military Cross; MID = Mention in Despatches; MM = Military Medal; VC = Victoria Cross

* indicates second or subsequent award for medal recipients but not for multiple MIDs.

Table A7-3A Imperial gallantry awards to Australian Forces — Boer War

Medal	Army	Total
VC	5	5
DCM	62	62
MID	376	376
Total	443	443

DCM = Distinguished Conduct Medal; MID = Mention in Despatches; VC = Victoria Cross

Table A7-3B Imperial gallantry awards to Australian Forces — First World War

Medal	Army	RAN	Total
VC	63		63
DSC		1	1
MC**	4		4
MC*	170		170
MC	2,369		2,369
DFC**	2		2
DFC*	5		5
DFC	62		62
DCM*	28		28
DCM	1,764		1,764
DSM		17	17
MM***	1		1
MM**	15		15
MM*	490		490
MM	9,932		9,932
MID	5,691	35	5,726
Total	20,596	53	20,649

DCM = Distinguished Conduct Medal; DFC = Distinguished Flying Cross; DFM = Distinguished Flying Medal; DSM = Distinguished Service Medal; MC = Military Cross; MID = Mention in Despatches; MM = Military Medal; VC = Victoria Cross

* indicates second or subsequent award for medal recipients but not for multiple MID's.

Table A7-3C Imperial gallantry awards to Australian Forces — Second World War

Medal	Army	RAAF	RAN	Total
VC	17	2		19
DSC**			2	2
DSC*			10	10
DSC			150	150
MC*	15			15
MC	500	7		507
DFC**		1		1
DFC*		125		125
DFC	1	2,179	1	2,181
CGM		10	1	11
DCM	201	2		203
DSM*			2	2
DSM			158	158
MM*	5			5
MM	1,001	5		1,006
DFM*		2		2
DFM		406		406
MID	6,199	1,803	602	8,604
Total	7,939	4,542	926	13,407

CGM = Conspicuous Gallantry Medal; DCM = Distinguished Conduct Medal; DFC = Distinguished Flying Cross; DFM = Distinguished Flying Medal; DSC = Distinguished Service Cross; DSM = Distinguished Service Medal; MC = Military Cross; MID = Mention in Despatches; MM = Military Medal; VC = Victoria Cross

* indicates second or subsequent award for medal recipients but not for multiple MID's.

Table A7-3D Imperial gallantry awards to Australian Forces — Korean War

Medal	Army	RAAF	RAN	Total
DSC**			1	1
DSC*			1	1
DSC			11	11
MC*	1			1
MC	26			26
DFC*		6		6
DFC		41		41
DCM*	1			1
DCM	4			4
DSM			3	3
MM*	1			1
MM	44			44
DFM		18		18
MID	110	150	32	292
Total	187	215	48	450

DCM = Distinguished Conduct Medal; DFC = Distinguished Flying Cross; DFM = Distinguished Flying Medal; DSC = Distinguished Service Cross; DSM = Distinguished Service Medal; MC = Military Cross; MID = Mention in Despatches; MM = Military Medal

* indicates second or subsequent award for medal recipients but not for multiple MID's.

Table A7-3E Imperial gallantry awards to Australian Forces — Malayan Emergency

Medal	Army	RAAF	Total
MC	2		2
DFC**		1	1
DFC*		4	4
DFC		10	10
MM	4		4
DFM		1	1
MID	35	34	69
Total	41	50	91

DFC = Distinguished Flying Cross; MC = Military Cross; MID = Mention in Despatches; MM = Military Medal

* indicates second or subsequent award for medal recipients but not for multiple MID's.

Table A7-3F Imperial gallantry awards to Australian Forces — Confrontation

Medal	Army	RAAF	RAN	Total
DSC			1	1
MC	3			3
MM	2			2
MID	8			8
Total	13	0	1	14

DSC = Distinguished Service Cross; MC = Military Cross; MID = Mention in Despatches; MM = Military Medal

Table A7-3G Imperial gallantry awards to Australian Forces — Vietnam War

Medal	Army	RAAF	RAN	Total
VC	4			4
DSC			9	9
MC*	1			1
MC	54			54
DFC*		3		3
DFC	12	60	6	78
CGM		1		1
DCM*	1			1
DCM	41			41
DSM			4	4
MM	83	1		84
DFM		10		10
MID	423	137	48	608
Total	619	212	67	898

CGM = Conspicuous Gallantry Medal; DCM = Distinguished Conduct Medal; DFC = Distinguished Flying Cross; DFM = Distinguished Flying Medal; DSC = Distinguished Service Cross; DSM = Distinguished Service Medal; MC = Military Cross; MID = Mention in Despatches; MM = Military Medal; VC = Victoria Cross

* indicates second or subsequent award for medal recipients but not for multiple MIDs.

Table A7-4 Imperial awards to Australian forces by Service

Medal	Army	RAN	RAAF	Total
GC	4	4		8
DSO**	1			1
DSO*	61	3	4	68
DSO	885	25	83	993
AFC*			1	1
AFC	14		180	194
GM*		3		3
GM	16	9	22	47
AFM*	2			2
AFM	2		17	19
Total	985	44	307	1,336

AFC = Air Force Cross; AFM = Air Force Medal; DSO = Distinguished Service Order; GC = George Cross; GM = George Medal; VC = Victoria Cross

* indicates second or subsequent award for medal recipients but not for multiple MIDs.

Note: This and the following table list awards that are for non-operational gallantry, the GC and the GM, or are distinguished and/or meritorious awards that have also been awarded for gallantry. For the DSO, AFC and AFM awards, individual examination of citations, if all citations were available, would be required to determine which of those awards were for gallantry and which were for distinguished and/or meritorious awards.

Table A7-5 Imperial awards to Australian forces made for actions during conflict

Medal	Boer War	First World War	Second World War	Korean War	Malaysian Emergency	Vietnam War	Total
GC			7	1			8
DSO**		1					1
DSO*		40	28				68
DSO	65	613	266	11		37	993
AFC*				1			1
AFC		14	166	13	1		194
GM*			3				3
GM			42	1	1	3	47
AFM*		2					2
AFM		2	17				19
Total	65	672	529	27	2	40	1,336

AFC = Air Force Cross; AFM = Air Force Medal; DSO = Distinguished Service Order; GC = George Cross; GM = George Medal

* indicates second or subsequent award for medal recipients but not for multiple MIDs.

Table A7-6 'Posthumous' imperial gallantry awards to Australian forces by Service^a

Medal	Army	RAN	RAAF	Total
VC	25		2	27
DSC		4		4
MC*	12			12
MC	122			122
DFC*			5	5
DFC	2	1	114	117
DCM*	3			3
DCM	86			86
DSM		5		5
MM**	1			1
MM*	28			28
MM	510			510
DFM			21	21
Total	789	10	142	941

DCM = Distinguished Conduct Medal; DFC = Distinguished Flying Cross; DFM = Distinguished Flying Medal; DSC = Distinguished Service Cross; DSM = Distinguished Service Medal; MC = Military Cross; MM = Military Medal; VC = Victoria Cross

^a This table shows the 941 gallantry awards to members of the Australian forces who died before the award was gazetted.

* indicates second or subsequent award for medal recipients but not for multiple MIDs.

Table A7-7 'Posthumous' Imperial gallantry awards to Australian forces made for actions during conflict^a

Medal	First World War	Second World War	Korean War	Vietnam War	Total
VC	15	10		2	27
DSC		4			4
MC*	11	1			12
MC	104	18			122
DFC*		4	1		5
DFC	2	112	1	2	117
DCM*	3				3
DCM	76	10			86
DSM		5			5
MM**	1				1
MM*	28				28
MM	480	28	1	1	510
DFM		20	1		21
Total	720	212	4	5	941

DCM = Distinguished Conduct Medal; DFC = Distinguished Flying Cross; DFM = Distinguished Flying Medal; DSC = Distinguished Service Cross; DSM = Distinguished Service Medal; DSO = Distinguished Service Order; MC = Military Cross; MM = Military Medal; VC = Victoria Cross

^a This table shows the 941 gallantry awards to members of the Australian forces who died before the award was gazetted.

* indicates second or subsequent award for medal recipients but not for multiple MID's.

APPENDIX 8

HONOURS BY SERVICE PER NUMBER WHO SERVED

Table A8-1 Honours by service per number who served

War	Strength ¹	Total awards ²	Percentage of strength awarded	Ratio
First World War				
Army	416,809*	20,596	0.05	1/20
Navy	5,250	53	0.01	1/100
Air Force	–	–	–	–
Second World War				
Army	691,400**	7,939	0.01	1/100
Navy	45,800	926	0.02	1/50
Air Force	189,700	4,542	0.02	1/50
Korean War				
Army	10,657	187	0.02	1/50
Navy	4,507	48	0.01	1/100
Air Force	~2,000	215	0.1	1/10
Malayan Emergency				
Army	7,000	41	0.006	1/167
Navy	–	–	–	–
Air Force	Not known	50	–	–
Confrontation				
Army	3,500	13	0.004	1/250
Navy	Not known	1	–	–
Air Force	Not known	–	–	–
Vietnam War				
Army	42,700	619	0.01	1/100
Navy	2,858	67	0.02	1/50
Air Force	4,443	212	0.05	1/20

* = Australian Imperial Force

** = Australian Imperial Force, plus militia

- 1 Australian War Memorial, *Australian war casualties*, Fact Sheet 19, Australian War Memorial, Canberra, 2009; and Joan Beaumont (ed), *Australian Defence: sources and statistics*, Oxford University Press, South Melbourne, 2001, *passim*. The numbers are approximate and vary between sources.
- 2 Anthony Staunton, Imperial gallantry awards to Australian forces, Table 3. Set out as Appendix 7 to this Report.

APPENDIX 9

AUSTRALIAN VICTORIA CROSS AWARDS

Australians serving in Australian units (91 awards)

Table A9-1 Imperial VC — Boer War (5 awards)

No	Name	Date of action	Place of action	Gazettal
1	Lieutenant Neville Reginald Howse NSW Medical Staff Corps	24 Jul 1900	Vredefort, South Africa	04 Jun 1901
2	Trooper John Hutton Bisdee Tasmanian Imperial Bushmen	1 Sep 1900	Warm Bad, South Africa	13 Nov 1900
3	Lieutenant Guy George Egerton Wylly Tasmanian Imperial Bushmen	1 Sep 1900	Warm Bad, South Africa	23 Nov 1900
4	Lieutenant Frederick William Bell West Australian Mounted Infantry	16 May 1901	Brakpan, Transvaal, South Africa	04 Oct 1901
5	Lieutenant Leslie Cecil Maygar 5th Victorian Mounted Rifles	23 Nov 1901	Geelhoutboom, Natal, South Africa	11 Feb 1902

NSW = New South Wales

Table A9-2 Imperial VC — First World War (63 awards)

No	Name	Date of action	Place of action	Gazettal
6	Lance Corporal Albert Jacka 14th Battalion, AIF	19–20 May 1915	Courtney's Post, Gallipoli	24 Jul 1915
7	Lance Corporal Leonard Maurice Keysor 1st Battalion, AIF	7 Aug 1915	Lone Pine, Gallipoli	15 Oct 1915
8	Lieutenant William John Symons 7th Battalion, AIF	8–9 Aug 1915	Lone Pine, Gallipoli	15 Oct 1915
9	Corporal Alexander Stewart Burton 7th Battalion, AIF	9 Aug 1915 Posthumous	Lone Pine, Gallipoli	15 Oct 1915
10	Corporal William Dunstan 7th Battalion, AIF	9 Aug 1915	Lone Pine, Gallipoli	15 Oct 1915
11	Private John Patrick Hamilton 3rd Battalion, AIF	9 Aug 1915	Lone Pine, Gallipoli	15 Oct 1915
12	Captain Alfred John Shout 1st Battalion, AIF	9 Aug 1915 Posthumous	Lone Pine, Gallipoli	15 Oct 1915
13	Lieutenant Frederick Harold Tubb 7th Battalion, AIF	9 Aug 1915	Lone Pine, Gallipoli	15 Oct 1915
14	2/Lieutenant Hugo Vivian Hope Throssell 10th Australian Light Horse, AIF	29–30 Aug 1915	Hill 60, Gallipoli	15 Oct 1915
15	Private John William Alexander Jackson 17th Battalion, AIF	25–26 Jun 1916	Armentières, France	9 Sep 1916
16	2/Lieutenant Arthur Seaforth Blackburn 10th Battalion, AIF	23 Jul 1916	Pozières, France	9 Sep 1916
17	Private John Leak 9th Battalion, AIF	23 Jul 1916	Pozières, France	9 Sep 1916
18	Private Thomas Cooke 8th Battalion, AIF	24–25 Jul 1916 Posthumous	Pozières, France	9 Sep 1916
19	Sergeant Claude Charles Castleton 5th Machine Gun Corps, AIF	28–29 Jul 1916 Posthumous	Pozières, France	26 Sep 1916
20	Private Martin O'Meara 16th Battalion, AIF	9–12 Aug 1916	Pozières, France	5 Sep 1916
21	Captain William Henry (Harry) Murray 13th Battalion, AIF	4–5 Feb 1917	Near Gueudecourt, France	10 Mar 1917
22	Lieutenant Frank Hubert McNamara 1 Squadron, Australian Flying Corps	20 Mar 1917	Tel-el-Hesi, Egypt	8 Jun 1917
23	Captain Percy Herbert Cherry 26th Battalion, AIF	26 Mar 1917 Posthumous	Langincourt, France	11 May 1917
24	Private Joergen Christian Jensen 50th Battalion, AIF	2 Apr 1917	Noreuil, France	8 Jun 1917
25	Captain James Ernest Newland 12th Battalion, AIF	7–9 & 15 Apr 1917	Baupaume, France	8 Jun 1917
26	Private Thomas James Bede Kenny 2nd Battalion, AIF	9 Apr 1917	Hermies, France	8 Jun 1917
27	Sergeant John Woods Whittle 12 Battalion, AIF	9 Apr 1917	Boursies, France	8 Jun 1917
28	Lieutenant Charles Pope 11th Battalion, AIF	15 Apr 1917 Posthumous	Louveral, France	8 Jun 1917

Table A9-2 Imperial VC — First World War (63 awards) (continued)

No	Name	Date of action	Place of action	Gazettal
29	Corporal George Julian Howell 1st Battalion, AIF	6 May 1917	Bullecourt, France	27 Jun 1917
30	Acting Captain Rupert Vance Moon 58th Battalion, AIF	12 May 1917	Bullecourt, France	14 Jun 1917
31	Captain Robert Cuthbert Grieve 37th Battalion, AIF	7 Jun 1917	Messines, Belgium	2 Aug 1917
32	Private John Carroll 33rd Battalion, AIF	7–12 Jun 1917	St Yves, France	2 Aug 1917
33	Private Reginald Roy Inwood 10th Battalion, AIF	19–22 Sep 1917	Polygon Wood, Belgium	26 Nov 1917
34	Second Lieutenant Frederick Birks 6th Battalion, AIF	20 Sep 1917 Posthumous	Glencourse Wood, Belgium	8 Nov 1917
35	Sergeant John James Dwyer 4th Company, Machine Gun Corps, AIF	26 Sep 1917	Zonnebeke, Belgium	26 Nov 1917
36	Private Patrick Joseph Bugden 31st Battalion, AIF	26–28 Sep 1917 Posthumous	Polygon Wood, Belgium	26 Nov 1917
37	Sergeant Major Lewis McGee 40th Battalion, AIF	4 Oct 1917 Posthumous	Ypres, Belgium	26 Nov 1917
38	Lance Corporal Walter Peeler 3rd Pioneer Battalion, AIF	20 Sep 1917	Ypres, Belgium	26 Nov 1917
39	Captain Clarence Smith Jeffries 34th Battalion, AIF	12 Oct 1917 Posthumous	Passchendaele, Belgium	18 Dec 1917
40	Sergeant Stanley Robert McDougall 47th Battalion, AIF	28 Mar 1918	Dernancourt, France	3 May 1918
41	Lieutenant Percy Valentine Storkey 19th Battalion, AIF	7 Apr 1918	Hangard Wood, France	7 Jun 1918
42	Lieutenant Clifford William King Sadlier 51st Battalion, AIF	24–25 Apr 1918	Villers-Bretonneux, France	11 Jul 1918
43	Sergeant William Ruthven 22nd Battalion, AIF	19 May 1918	Ville-sur-Ancre, France	11 Jul 1918
44	Corporal Philip Davey 10th Battalion, AIF	28 Jun 1918	Merris, France	17 Aug 1918
45	Lance Corporal Thomas Leslie Axford 16th Battalion, AIF	4 Jul 1918	Hamel Woods, France	17 Aug 1918
46	Private Henry Dalziel 15th Battalion, AIF	4 Jul 1918	Hamel Woods, France	17 Aug 1918
47	Corporal Walter Ernest Brown 20th Battalion, AIF	6 Jul 1918	Villers-Bretonneux, France	17 Aug 1918
48	Lieutenant Albert Chalmers Borella 26th Battalion, AIF	17–18 Jul 1918	Villers-Bretonneux, France	16 Sep 1918
49	Lieutenant Alfred Edward Gaby 28th Battalion, AIF	8 Aug 1918 Posthumous	Villers-Bretonneux, France	30 Oct 1918
50	Private Robert Matthew Beatham 8th Battalion, AIF	9 Aug 1918 Posthumous	Rosiere, France	14 Dec 1918
51	Sergeant Percy Clyde Statton 40th Battalion, AIF	12 Aug 1918	Proyart, France	27 Sep 1918
52	Lieutenant William Donovan Joynt 8th Battalion, AIF	23 Aug 1918	Herleville Wood, France	27 Nov 1918

Table A9-2 Imperial VC — First World War (63 awards) (continued)

No	Name	Date of action	Place of action	Gazettal
53	Lieutenant Lawrence Dominic McCarthy 16th Battalion, AIF	23 Aug 1918	Madame Wood, France	14 Dec 1918
54	Lance Corporal Bernard Sidney Gordon 41st Battalion, AIF	26–27 Aug 1918	Fargny Wood, France	26 Dec 1918
55	Private George Cartwright 33rd Battalion, AIF	31 Aug 1918	Road Wood, France	14 Dec 1918
56	Temporary Corporal Alexander Henry Buckley 54th Battalion, AIF	1/2 Sep 1918 Posthumous	Peronne, France	14 Dec 1918
57	Private William Matthew Currey 53rd Battalion, AIF	1 Sep 1918	Peronne, France	14 Dec 1918
58	Corporal Arthur Charles Hall 54th Battalion, AIF	1/2 Sep 1918	Peronne, France	14 Dec 1918
59	Sergeant Albert David Lowerson 21st Battalion, AIF	1 Sep 1918	Mont St Quentin, France	14 Dec 1918
60	Private Robert Mactier 23rd Battalion, AIF	1 Sep 1918 Posthumous	Mont St Quentin, France	14 Dec 1918
61	Lieutenant Edgar Thomas Towner 2nd Battalion, Australian Machine Gun Corps, AIF	1 Sep 1918	Mont St Quentin, France	14 Dec 1918
62	T/Corporal Lawrence Carthage Weathers 43rd Battalion, AIF	2 Sep 1918	Allaines, France	26 Dec 1918
63	Sergeant Maurice Vincent Buckley (aka. Gerald Sexton) 13th Battalion, AIF	18 Sep 1918	Le Verguier, France	14 Dec 1918
64	Private James Park Woods 48th Battalion, AIF	18 Sep 1918	Le Verguier, France	26 Dec 1918
65	Private Edward John Frances Ryan 55th Battalion, AIF	30 Sep 1918	Hindenberg Defences, France	26 Dec 1918
66	Major Blair Anderson Wark 32nd Battalion, AIF	29 Sep – 1 Oct 1918	Bellicourt, France	26 Dec 1918
67	Lieutenant Joseph Maxwell 18th Battalion, AIF	3 Oct 1918	Estrees, France	6 Jan 1919
68	Lieutenant George Mawby Ingram 24th Battalion, AIF	5 Oct 1918	Montbrehain, France	6 Jan 1919

AIF = Australian Imperial Force

Table A9-3 Imperial VC — Second World War (19 awards)

No	Name	Date of action	Place of action	Gazettal
69	Corporal John Hurst Edmonson 2/17th Battalion,	13–14 Apr 1941 Posthumous	Tobruk, Libya	4 Jul 1941
70	Lieutenant (Arthur) Roden Cutler 2/5th Field Regiment, 7th Division Artillery	19 Jun 1941	Merdjayoun, Syria	28 Nov 1941
71	Private James Heather Gordon 2/31st Battalion	10/11 Jul 1941	Djezzine, Syria	28 Oct 1941
72	Lieutenant Colonel Charles Groves Wright Anderson 2/19th Battalion	18–22 Jan 1942	Muar River, Malaya	13 Feb 1942
73	Private Arthur Stanley Gurney 2/48th Battalion	22 Jul 1942 Posthumous	Tel-el-Eisa, Egypt	14 Sep 1942
74	Private Bruce Steel Kingsbury 2/14th Battalion	29 Aug 1942 Posthumous	Isurava, New Guinea	9 Feb 1943
75	Corporal John Alexander French 2/9th Battalion	4 Sep 1942 Posthumous	Milne Bay, New Guinea	14 Jan 1943
76	Sergeant William Henry Kibby 2/28th Battalion	23–31 Oct 1942 Posthumous	El Alamein, Egypt	28 Jan 1943
77	Private Percival Eric Gratwick 2/48th Battalion	25–26 Oct 1942 Posthumous	Miteiriya Ridge, El Alamein, Egypt	28 Jan 1943
78	Pilot Officer (Flight Sergeant) Rawdon Hume Middleton Posted to 149 Squadron, RAF	28–29 Nov 1942 Posthumous	Raid on Turin, Italy	15 Jan 1943
79	Flight Lieutenant William Ellis Newton No 22 Squadron, RAAF	16 Mar 1943 Posthumous	Salamaua, New Guinea	19 Oct 1943
80	Private Richard Kelliher 2/25th Battalion	13 Sep 1943	Nadzab, New Guinea	30 Dec 1943
81	Sergeant Thomas Currie Derrick 2/48th Battalion	24 Nov 1943	Sattelberg, New Guinea	23 Mar 1944
82	Corporal Reginald Roy Rattey 25th Battalion	22 Mar 1945	Buin Rd, Bougainville	26 Aug 1945
83	Lieutenant Albert Chowne 2/2nd Battalion	25 Mar 1945 Posthumous	Dagua, New Guinea	6 Sep 1945
84	Corporal John (Jack) Bernard Mackey 2/3rd Battalion	12 May 1945 Posthumous	Tarakan, Borneo	8 Nov 1945
85	Private Edward Kenna 2/4th Battalion	15 May 1945	Wewak, New Guinea	6 Sep 1945
86	Private Leslie Starceovich 2/43rd Battalion	28 Jun 1945	Beaufort, North Borneo	8 Nov 1945
87	Private Frank Partridge 8th Battalion	24 Jul 1945	Bonis, Bougainville	22 Jan 1946

Table A9-4 Imperial VC — Vietnam War (4 awards)

No	Name	Date of action	Place of action	Gazettal
88	Warrant Officer II Kevin Arthur Wheatley Australian Army Training Team Vietnam	13 Nov 1965 Posthumous	Tra Bong Valley, Vietnam	13 Dec 1966
89	Major Peter John Badcoe Australian Army Training Team Vietnam	23 Feb 1967 Posthumous	Thua Thien, Vietnam	13 Oct 1967
90	Warrant Officer II Rayne Stewart Simpson Australian Army Training Team Vietnam	6–11 May 1969	Kontum Province, Vietnam	29 Aug 1969
91	Warrant Officer II Keith Payne Australian Army Training Team Vietnam	24 May 1969	Ben Het, Vietnam	19 Sep 1969

Australians serving in British Units (5 awards)

Table A9-5 Imperial VC to Australians serving in British Units — Boer War (1 award)

No	Name	Date of action	Place of action	Gazettal
1	Sergeant James Rogers South African Constabulary	15 June 1901	Thaba 'Nchu, Orange Free State, South Africa	18 Apr 1902

Table A9-6 Imperial VC to Australians serving in British Units — First World War (1 award)

No	Name	Date of action	Place of action	Gazettal
2	Temporary Lieutenant Wilbur Taylor Dartnell 25th (S) Battalion, The Royal Fusiliers	3 Sep 1915 Posthumous	Maktau, British East Africa	23 Dec 1915

Table A9-7 Imperial VC to Australians serving in British Units — Russian Civil War (2 awards)

No	Name	Date of action	Place of action	Gazettal
3	Corporal Arthur Percy Sullivan 45th Battalion, The Royal Fusiliers	10 Aug 1919	Sheika River, Russia	29 Sep 1919
4	Sergeant Samuel George Pearse 45th Battalion, The Royal Fusiliers	29 Aug 1919 Posthumous	Emtsa, North Russia	23 Oct 1919

Table A9-8 Imperial VC to Australians serving in British Units — Second World War (1 award)

No	Name	Date of action	Place of action	Gazettal
5	Acting Wing Commander Hughie Idwal Edwards 105 Squadron, Royal Air Force	4 Jul 1941	Bremen, Germany	22 Jul 1941

Recipients of the Victoria Cross for Australia

Table A9-9 Australians awarded the Victoria Cross for Australia¹ (3 awards)

No	Name	Date of Action	Place of Action	Gazette
1	Trooper Mark Gregor Strang Donaldson Special Air Service Regiment	2 Sep 2008	Oruzgan Province, Afghanistan	20 Jan 2009
2	Corporal Benjamin Roberts-Smith Special Air Service Regiment	11 Jun 2010	Kandahar Province, Afghanistan	24 Jan 2011
3	Corporal Daniel Keighran 6th Battalion, Royal Australian Regiment	24 Aug 2010	Oruzgan Province, Afghanistan	1 Nov 2012

¹ Correct at time of printing.

APPENDIX 10

STATEMENT OF ORDINARY SEAMAN JACK ARCHIBALD

As reproduced in *Of Nautilus and eagles: history of the Royal Australian Navy*, by Peter Firkins¹

- 0530 On the morning of Wednesday 4th March 1942, HMAS *Yarra*, escorting *Anking*, *Francol* and a small motor minesweeper was about 500 miles south of Tjilitjap, Java, steering due south.
- 0630 We went to dawn action stations at 0539 and remained there until 0630 by which time it was daylight. 'Hands to breakfast' was piped, and we were standing by awaiting orders from the bridge to carry on. Then the alarms sounded and we looked to see what it was. A force of ships was observed astern of us distance about eight miles. It had first been sighted, I think, from the bridge. At the same time as the alarms were sounded the convoy was ordered to disperse and smoke-screen was laid.
- 0635 The force astern was overtaking us very rapidly and at about 0635 fired its first salvo, which fell about 200 yards astern. *Yarra* was put about and it opened fire immediately. One round from *Yarra* struck an 8" cruiser in the bridge. *Yarra* then followed the rest of the convoy into the smokescreen and was able to remain hidden from the enemy, and free from damage from their shells which were dropping all around for ten minutes. During these ten minutes, orders were given from the bridge to prepare to abandon ship and hands were busy turning out seaboats, provisioning boats (no food unfortunately was got into the Carley floats) and a variety of jobs associated with the saving of as many lives as possible in what we well knew was going to be the end of our ship.
- 0645 At 0645 *Yarra* became discernible in the smoke-screen and we were immediately hit with a heavy salvo which struck just ahead of the starboard waist demolishing the sick bay. Probably lost by this hit would be Surgeon-Lieutenant WJ Maclaren Robertson, RAN, SBAR Mickle and a Sick Bay PO whose name I cannot remember. In addition, approximately 30 Javanese seamen (survivors of the Dutch merchantman *Tarangi* [sic], which, with her Captain and two deck and one engineer officers, had been picked up at 1800 on Sunday 1st March in the Indian Ocean about 24 hours out of Sunda Strait) were accommodated in Sick Bay passageway and the likelihood is that they all perished with this salvo.
- 0647 The second salvo was the worst actually encountered throughout the whole action and struck and carried away the bridge and surrounding superstructure. The impact was so severe that it practically stopped the ship. Lost by this would almost certainly be: the Commanding Officer Lieutenant Commander RW Rankin, RAN; the Navigating Officer Lieutenant Dawson, RANR; Lieutenant NM Anderson, RANVR; Lieutenant GL Wright, RANVR; Commander Gunner WD Bull; PO Josh,

¹ Peter Firkins, *Of nautilus and eagles: history of the Royal Australian Navy*, Cassell Australia, Stanmore, NSW, 1975, pp. 144–148.

RN (Gunners Mate); Petty Officers WE Smith and R Parsons, Yeoman of Signals ... Leading Signalman ... Leading Cook W Briggs, Tel C Simpson and AB Peterson. Lost also would be two RN Telegraphist ratings who would be with Tel Simpson in the wireless room.

- 0650 It would be difficult for me to say just how many salvos hit *Yarra* after the second. Two heavy cruisers were concentrating on *Yarra* from a distance of about 2 miles. Shells were falling in every direction, and the ships we were escorting were being attacked by the force which had now spread out. The cruisers had put up three of their planes, one of which dive-bombed and sank the motor-minesweeper. There were, I believe, 14 survivors and they were picked up and brought to Fremantle. By what ship, I do not know. Most of the salvos hit *Yarra* in the bridge area and forward of this. Then a salvo hit the engine room stopping the engines and putting out all the lights. Another salvo took No. 3 gun, the main mast and our after .5 inch. Seaboats were all lost by this gunfire. Casualties in this phase of the action would probably include Able Seaman W Gillies, G Loyd (sic) K Banks, R Oliver, W Rushton, E Moffat and Johnson, three Able Seamen whose names I can't remember and the PO in charge of the after part of the ship. The *Francol* sank from gunfire about this time. I do not know if there were any survivors from her.
- 0655 *Anking* was the next to go. She was sunk from gunfire by cruisers and destroyers. She sank at about 0655. There were a few survivors, who I afterwards learned were picked up by the *Tawali* and taken to Colombo. A few more were picked up by the Dutch submarine K11 and taken to Colombo. I have no knowledge of the fate of any others of the *Anking's* personnel.
- 0700 At 0700 orders to abandon ship were given by the First Lieutenant, Lieutenant-Commander F Smith. Two Carley floats were thrown into the water and 33 of us went over the side and climbed into the floats. Lieutenant-Commander Smith did not jump into the water as far as I know, and was not saved, my last recollection of him being of him standing on the deck giving orders and getting the men away.
- 0705 Thirty-three of us had managed to gain the two Carley-floats. One of the destroyers, similar to the 'Hikiki' class, approached to within 100 yards of us. An officer on her bridge had his binoculars on us. I think he was looking for officers. A rope ladder was lowered from her port waist, and one sea boat was turned out. We made no effort to approach them and the destroyer steamed off in the direction of *Yarra*, which was still afloat. This destroyer then stood off at a distance of about 200 yards from *Yarra* and poured salvo after salvo into her for almost three hours.
- 0930 The destroyer ceased fire at 0930 with *Yarra* still afloat. A seaplane from one of the cruisers then dive-bombed *Yarra* from masthead-height, dropping one bomb, which was a near miss. We all thought that they were rotten shots if they could not hit a stationary ship with no protection from masthead height.
- 1000 Finally HMAS *Yarra* sank after having withstood almost three hours of battering. The time would be approximately 1000. Incidentally it is desired to add that the seaplane that dropped the bomb seemed to have retractable floats. These matters are very hazy to me now but I have the impression that those of us in the raft commented on this at the time.

1005 The enemy force steamed off. I cannot state on what course. Thirty-three men were on the two rafts. These rafts remained together for four days and were eventually both picked up by the Dutch submarine K11. During the course of the five days we were adrift, twenty of the thirty-three men died from exposure.

On the afternoon of Sunday 9 March at 1430 K11 surfaced near us and took us aboard. Those who to my knowledge died whilst on the Carley floats are ...

General

It is not my opinion that there will be any other survivors beside those already saved. Gunfire destroyed all our boats, and we were on the only available rafts. There was nothing else on the ship that would float. The only officer I have not previously mentioned is the engineer officer and I think that he would go when we got hit in the engine room. With him would go whatever engine room staff I have not otherwise mentioned. Able Seaman Oakes, who was on No. 2 gun, told me before he died that Leading Seaman Taylor would not leave his post on the gun, and had refused to abandon ship, saying that he would fire the gun on his own. It would not be possible to say whether he was able to do this as there was such confusion in the noise of the salvos but Oakes said to me, 'Buck has got too much guts for those Japs altogether'. Also I would like to mention the courage of Leading Signaller G Bromilow who, though badly wounded in the right leg and from shoulder to shoulder, stuck out the five days on the raft without a whimper, and would not take an extra ration of water when offered to him. I would like to conclude by saying that my memory is somewhat hazy on some points but to the best of my knowledge what I have related is correct.



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