



# Australian Government

## Defence Honours and Awards Appeals Tribunal

### **Albrecht and the Department of Defence re: Cowan, Taylor, Polack and Sheard [2025] DHAAT 9 (17 June 2025)**

File Number 2024/018

Re: **Dr John Edward Albrecht on behalf of Pilot Officer  
Warren Frank Cowan MG; Pilot Officer David Read  
Taylor MG; Sergeant Russell Bradburn Polack MG; and  
Sergeant Lauri Edwin Sheard MG.**  
Applicant

And **Department of Defence**  
Respondent

**Tribunal** Mr Stephen Skehill (Presiding Member)  
Major General Mark Kelly AO DSC (Retd)  
Air Commodore Anthony Grady AM (Retd)

**Appearances** Dr John Edward Albrecht  
Applicant

Squadron Leader Simon Hall, Air Force Headquarters  
Department of Defence

Mr Tyson Pan  
Assistant Director, Defence Honours and Recognition  
Department of Defence, for the Respondent

**Family Representatives**  
Mr Chris Buchanan  
Mr Tim Warnecke  
Wing Commander Marcus Watson

**Hearing Date** 6 May 2025

## **DECISION**

On 17 June 2025, the Tribunal decided:

- to affirm the Defence decision that Pilot Officer David Read Taylor MG, Sergeant Russell Bradburn Polack MG and Sergeant Lauri Edwin Sheard MG not be recommended to be awarded the Victoria Cross for Australia in lieu of the Medals for Gallantry they had each received; but
- to recommend that the Minister should recommend to the Governor-General that Pilot Officer Warren Frank Cowan MG should be awarded the Star of Gallantry in lieu of the Medal for Gallantry he had been previously awarded.

## **CATCHWORDS**

*DEFENCE HONOUR* – Victoria Cross for Australia – Gallantry Decoration already awarded – Air Force - Second World War – Hudson Bomber – Buna Beachhead – New Guinea – recommendation by enemy eyewitness.

## **LEGISLATION**

*Defence Act 1903* – Part VIIIIC – Sections 110T, 110V(1), 110VB(1), 110VB(6)

*Defence Regulation 2016* - Section 35

### **Victoria Cross Regulations**

*Commonwealth of Australia Gazette S25* of 4 February 1991, *Victoria Cross for Australia, Letters Patent and Regulations* dated 15 January 1991. *Revoked by Commonwealth of Australia Gazette G00965* of 2017.

*Commonwealth of Australia Gazette G00965* of 28 August 2017, *Victoria Cross for Australia, Governor-General Determination* dated 6 September 2017.

### **Gallantry Decoration Regulations**

*Commonwealth of Australia Gazette S25* of 4 February 1991, *Gallantry Decorations Regulations, Letters Patent* dated 15 January 1991.

*Commonwealth of Australia Gazette S420* of 6 November 1996, *Gallantry Decorations Regulations, Amendment of the Regulations* dated 17 October 1996.

*Commonwealth of Australia Gazette S123* of 1 August 2012, *Gallantry Decorations Regulations, Governor-General Determination* dated 6 July 2012.

## Introduction

1. The Applicant, Dr John Edward Albrecht, seeks review of a decision by the Department of Defence to refuse to recommend Pilot Officer Warren Cowan MG, Pilot Officer David Taylor MG, Sergeant Russell Polack MG, and Sergeant Lauri Sheard MG for the Victoria Cross for Australia for their actions at Buna Beachhead, New Guinea on 22 July 1942.<sup>1</sup>

2. These men were the captain and crew of Royal Australian Air Force No. 32 Squadron Lockheed Hudson aircraft A16-201 who were all killed in action on that day. In 2023 each was posthumously awarded the Medal for Gallantry for that service.

## Decision under review

3. On 9 and 10 September 2024, Dr Albrecht of British Columbia, Canada, wrote to the Minister for Veterans' Affairs and the Minister for Defence Personnel, the Hon Matt Keogh MP, regarding recognition for the above personnel.<sup>2</sup>

4. On 27 September 2024, Dr Albrecht applied to the Defence seeking a review of the recognition already afforded to these men and stated:

*I am recommending the crew's Medals for Gallantry be upgraded to the Victoria Cross Australia [sic] or equivalent decoration, for each crew member.*<sup>3</sup>

5. On 8 October 2024, Defence responded to Dr Albrecht on behalf of the Minister, providing details of the deliberation process that resulted in the awarding of the Medal for Gallantry to each member of the flight crew.<sup>4</sup> Defence provided a further letter on 21 October 2024.<sup>5</sup>

6. On 11 October 2024, Dr Albrecht applied to the Tribunal for a review of Defence's decision of 8 October 2024.<sup>6</sup>

## Tribunal jurisdiction

7. Pursuant to s110VB(2) of the *Defence Act 1903*, the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within

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<sup>1</sup> Application, Dr John Albrecht to the Tribunal dated 11 October 2024.

<sup>2</sup> Email Dr Albrecht to Minister Keogh on 9-10 September 2024 and Minister Keogh response of 12 September 2024.

<sup>3</sup> Letter, Dr John Albrecht to Defence, 27 September 2024

<sup>4</sup> Letter, Defence to Dr Albrecht, MC24-002456, dated 8 October 2024.

<sup>5</sup> Letter, Defence to Dr Albrecht, BN90546864, dated 21 October 2024.

<sup>6</sup> Application, Dr John Albrecht to the Tribunal, dated 11 October 2024.

the Department of Defence to refuse to recommend a person for a defence honour in response to an application. Regulation 35 of the *Defence Regulation 2016* lists the defence honours that may be the subject of a reviewable decision. The Victoria Cross for Australia is included in the defence honours listed in Regulation 35. Therefore, the Tribunal has jurisdiction to review decisions in relation to this defence honour.

8. As required by s110VB(6) of the Act, the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision. In accordance with s110VB(1) of the Act, as the Applicant seeks a defence honour, the Tribunal does not have the power to affirm or set aside the decision, but may make any recommendations to the Minister that it considers appropriate.

### **Conduct of the review**

9. In accordance with its Procedural Rules, on 17 January 2025 the Tribunal wrote to the Secretary of the Department of Defence informing him of Dr Albrecht's application for review.<sup>7</sup> The Tribunal requested a merits-based assessment of the actions of Pilot Officer Cowan and his aircrew against the eligibility criteria for the Victoria Cross for Australia and a report on the material questions of fact and reasons for the decision to refuse the original application. The Tribunal also requested that the Secretary provide copies of documentation relied upon in reaching the decision and any other relevant documents.

10. On 4 February 2025, the Director of Honours and Awards in the Department of Defence provided a submission on behalf of Defence.<sup>8</sup> The Defence submission included a summary of the events and a history of correspondence between the Government, Dr Albrecht and family members regarding this matter, and a 1997 eyewitness recommendation by a former Japanese pilot, Saburo Sakai. The report also contained some records of departmental correspondence that led to the 2023 posthumous awards to each of the aircrew. Some attachments to this correspondence were not included but were later sourced by the Tribunal Secretariat and shared with the applicant in the course of this review.

11. The Defence report was forwarded to Dr Albrecht for comment on 6 February 2025. Dr Albrecht responded with his comments on 16 February 2025.

12. Noting that Dr Albrecht had apparently lodged his application for review without involvement of the families of Messrs Cowan, Taylor, Polack and Sheard, the Tribunal Secretariat contacted representatives of those families to ensure that they were aware of the application and the Tribunal's processes. Those representatives were provided with copies of the documentation before the Tribunal and invited to attend and participate in the hearing if they so wished. As it transpired:

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<sup>7</sup> Letter, Tribunal Chair to Defence Secretary, 17 January 2025.

<sup>8</sup> Letter, Directorate of Honours and Awards to the Tribunal, as submitted with the Defence report, 4 February 2025.

- a) Mr Chris Buchanan attended as a representative of the Cowan family;
- b) Mr Tim Warnecke attended as a representative of the Sheard family; and
- c) Wing Commander Marcus Watson, CO No.32 Squadron, RAAF, attended at the invitation of the Polack family.

13. Mr Buchanan participated in the hearing, speaking in support of Dr Albrecht's application and recounting the admiration and fond memories of the family for their late relative.

14. Mr Warnecke did not address the Tribunal during the hearing but, after the hearing (which was held via audio-visual link) advised that this was because his microphone had been muted. He briefly advised his support for the Victoria Cross application but did not take up the Tribunal's offer to make any more detailed written submission.

15. Wing Commander Watson did not advocate for or against the application, but spoke of the pride of No.32 Squadron at the elevation of the four crew members by award of the Medal of Gallantry.

16. During the hearing, the Tribunal asked Defence to take on notice and provide a written submission addressing two issues:

- a) clarification of the service record summary provided in the Defence report; and
- b) any comments Defence wished to make in relation to the meaning of the eligibility criteria for the Victoria Cross for Australia as outlined by the Tribunal in *Hulse and the Department of Defence re: Norden [2022] DHAAT 11*.

17. Defence provided that submission on 22 May 2025 and it was copied to Dr Albrecht and to the representatives of the families for any comment they wished to make. Dr Albrecht provided a further written submission, commenting on matters raised at the hearing and in the Defence submission. The substance of this submission is discussed further below. Mr Buchanan provided a written submission in which he commented on the position adopted by Defence and reiterated the family's support for the Victoria Cross application.

18. On 9 April 1942 the Commanding Officer of No 7 Squadron (then a Hudson Operational Training Unit) at RAAF Station Laverton advised the Secretary of the Air Board of the composition of various air crews for their upcoming course,<sup>9</sup> later stating that these personnel will *'be available for posting as crews on successful completion of the course.'*

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<sup>9</sup> Cowan & crew-Course IV 9 Apr 1942-NAA A11281 8-1-20-AIR-ID 213927-[No 7 SQN] OTU Personnel Extract copy, pp 1-2.

One of the listed crews one comprised:

*Captain – P/O Cowan*  
*2<sup>nd</sup> Pilot – Sgt Pollack [sic]*  
*W.A.G.I [sic]. –P/O Taylor*  
*W.A.G.2 – Sgt Sheard.*

19. This was the crew to which Dr Albrecht's application related. The crew's composition was broadly consistent with what the Tribunal understood was the policy of the day which required that, notwithstanding that most Hudson aircraft were configured with a single pilot's station,<sup>10</sup>, RAAF Hudson crews were to comprise two pilots and two Wireless Air Gunners (WAGs). Pilot Officer Cowan's crew was posted as a 'formed body' to 32 Squadron at Seven Mile airfield near Port Moresby on 9 May 1942, and as far as the Tribunal could determine, operated in that manner until their deaths on 22 July 1942. Although 32 Squadron relocated to Horn Island on 22 May 1942, it continued to stage air operations out of Seven Mile airfield. Pilot Officer Cowan and his crew took off from Seven Mile airfield on 22 July 1942, but did not return.

20. Brief details drawn from the individual service record files of each of these crew members, so far as relevant to the decision under review, are set out in the following paragraphs.

#### **407614 Pilot Officer Warren Frank Cowan MG**

21. Warren Frank Cowan was born on 12 May 1911. He enlisted in the Royal Australian Air Force on 7 December 1940 as provisional Aircrew – Aircraftman, after 1 year and 94 days serving in the 27th Battalion C Coy. He was promoted to Leading Aircraftman on 1 February 1941, was awarded a Flying Badge on 1 June 1941, and was re-mustered as an Airman Pilot and promoted to Temporary Sergeant on 25 July 1941. He completed a navigation course in December 1941 and on 8 December 1941 was posted to 6 Squadron as a pilot for flying duties. On 28 January 1942 he was granted a commission as a Pilot Officer. He undertook a conversion course on the Lockheed Hudson aircraft with 7 Squadron, and was posted to 2 Squadron on 22 April 1942. On 9 May 1942 he was posted to 32 Squadron.

#### **408206 Pilot Officer David Taylor MG**

22. David Reid Taylor was born on 2 July 1909. He enlisted in the Royal Australian Air Force on 25 April 1941 as provisional Air Crew - Aircraftman. He had previously served in 2nd Med Brigade Artillery in 1926. After completing initial training, he undertook additional training at No 1 Wireless and Gunnery School and No 2 Bomb and Gunnery

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<sup>10</sup> Just over 20 of the RAAF's almost 250 Hudsons were fitted with dual controls, at least at some stage of their service life. The Tribunal was unable to locate any evidence to suggest that A16-201/FH178 was ever equipped with dual controls.

School. He re-mustered to Air Crew V (Gunner) on 23 May 1941, was promoted to Leading Aircraftman on 21 June 1941, qualified as a Wireless Telegraphy Operator on 2 February 1942, was re-mustered as Air Crew II (Gunner) on 5 February 1942, qualified as an Air Gunner and was promoted to Temporary Sergeant, awarded his Air Gunner Badge and re-mustered as Wireless Operator Air Gunner on 1 March 1942, and was commissioned as a Pilot Officer on 9 March 1942. Pilot Officer Taylor was variously posted to 7 Squadron, 2 Squadron and, on 9 May 1942, to 32 Squadron.

#### **411183 Sergeant Russell Polack MG**

23. Russell Bradburn Polack was born on 2 March 1918. He enlisted in the Royal Australian Air Force on 26 April 1941 as provisional Aircrew - Aircraftman. He had previously undertaken 6 hours and 45 minutes dual flying training at Mascot. He re-mustered as Air Crew V(P) on 19 May 1941, was promoted to Leading Aircraftman and re-mustered as Air Crew II(P) on 21 June 1941, received his Flying Badge on 15 October 1941, and was promoted to Temporary Sergeant and re-mustered to Airman Pilot on 11 December 1941. He completed a Navigation and Reconnaissance Course on 13 February 1942 with a distinguished pass and was reported as *keen reliable navigator, application good*. He was posted to 2 Squadron as a 2nd Pilot on 22 April 1942 and completed a conversion course on the Lockheed Hudson aircraft on 13 March 1942 during which he recorded 27.2 hours flying – 7.35 hours dual, 8.10 as 2nd Pilot, 9.35 hours solo and 2 hours night flying. The form recording his participation in that course noted as “Remarks on Conversion Flying” *1st Pilot*. He was variously posted to 7 Squadron, 2 Squadron and, on 9 May 1942, to 32 Squadron.

#### **416369 Sergeant Lauri Sheard MG**

24. Lauri Edwin Sheard was born on 9 March 1922. He enlisted in the Royal Australian Air Force on 24 May 1941 as provisional Aircrew - Aircraftman. He re-mustered to Air Crew (Gunner) on 19 June 1941 and was promoted to Leading Aircraftman on 21 June 1941. He was promoted to Temporary Sergeant, awarded his Air Gunner Badge and re-mustered to Wireless Operator Air Gunner on 1 March 1942. He was variously posted to 7 Squadron, 2 Squadron and, on 9 May 1942, to 32 Squadron.

25. For their service, Pilot Officer Cowan, Pilot Officer Taylor, Sergeant Polack and Sergeant Sheard have each been awarded the following honours and service/campaign medals:

- a. Medal for Gallantry;
- b. 1939-45 Star;
- c. Pacific Star;
- d. War Medal 1939-45; and
- e. Australian Service Medal 1939-45.



## Eligibility criteria for the Victoria Cross for Australia

26. The Victoria Cross for Australia was established by Letters Patent on 15 January 1991.<sup>11</sup> It is Australia's highest gallantry decoration for the purpose of:

*according recognition to persons who, in the presence of the enemy, perform acts of the most conspicuous gallantry, or daring or pre-eminent acts of valour or self-sacrifice or display extreme devotion to duty.*

27. The honour is governed by Regulations set out in the Schedule to the Royal Warrant which provide that:

3. *The decoration 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.*

[...]

## Eligibility criteria for the Australian Gallantry Decorations

28. The Star of Gallantry, the Medal for Gallantry and the Commendation for Gallantry were established as Gallantry Decorations by Letters Patent on 15 January 1991 for the purpose of:

*according recognition to members of the Defence Force and certain other persons who perform acts of gallantry in action.*

29. The honours are governed by the Regulations set out in the Schedule, as amended in 1996, which provide as follows:

*(1) **The Star of Gallantry (SG)** shall be awarded only for acts of great heroism or conspicuous gallantry in action in circumstances of great peril.*

*(2) **The Medal for Gallantry (MG)** shall be awarded only for acts of gallantry in action in hazardous circumstances.*

*(3) **The Commendation for Gallantry (CG)** may be awarded for other acts of gallantry in action which are considered worthy of recognition.<sup>12</sup>*

## Dr Albrecht's application to Defence

30. In his application to Defence on 27 September 2024, Dr Albrecht outlined his interest

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<sup>11</sup> *Commonwealth of Australia Gazette S25 of 4 February 1991, Victoria Cross for Australia, Letters Patent and Regulations*, dated 15 January 1991.

<sup>12</sup> *Commonwealth of Australia Gazette S420 of 6 November 1996, Amendment of the Gallantry Decorations Regulations*, dated 17 October 1996.

in aviation history and, in particular, the history of Bomber Command during the Second World War. He mentioned that his retirement project had been to chronicle the service of the 74 aircraft and crews that had failed to return from 625 Squadron during its eighteen month history. He also outlined his interest in the book *SAMURAI!* by the now deceased Japanese fighter pilot, Saburo Sakai, which mentions the service of Pilot Officer Cowan and his aircrew.

31. Dr Albrecht stated that:

*It is noteworthy Saburo Sakai was the sole surviving fighter pilot ace of the Japanese Navy at war's end. Of his two hundred combat encounters the one he remembers most vividly was the one-sided dogfight in the vicinity of the Buna beachhead between a solo RAAF twin-engined Hudson and six Japanese Zero fighters, piloted by some of the most accomplished aces.*

*Despite being grossly outnumbered, P/O Cowan and his crew, with teamwork and coordination, combined with Cowan's piloting skills with unusual aerobatic prowess for a multi-engine aircraft, were able to keep the Japanese fighters at bay for a lifelong, ten minutes. Once the rear gunner was put out action it was only a matter of time before FH178 was engulfed in flames, at an altitude, too low to bale out. At this point it was apparent to those crew members still alive they would not be returning to Base, squadron mates, family and friends. Two of the crew were married with children.*

*Just prior to this, as a close knit team, this crew had persevered in bombing a strategic target that was destroyed and was most likely the one event resulting in the Japanese Army falling short of its objective of Port Moresby, the stepping stone to mainland Australia. In the end they would pay with their lives.*

32. Dr Albrecht noted that Sakai had recommended that Pilot Officer Cowan and his aircrew should be awarded the highest decoration for valour, and that all men had been recognised in 2023 with Medals for Gallantry. He stated:

*I realize that it would be unprecedented to award four VCs to one crew for their actions but in this case I think it is warranted. There is little doubt P/O Cowan was at the controls of FH178 during this combat but without the sharp eyes, anticipation and nerves of steel of the other crew members they would not have survived the first pass by the Japanese fighters. This was an all crew combat encounter from the first attack until FH178 crashed in flames into the jungle near Popongo village.*

*As far as I know there was no crew in Bomber Command who was awarded multiple VCs. The closest similar situation was the awarding of five Conspicuous Gallantry Medals to the crew members of Lancaster ED377 (for service in 1943).<sup>13</sup>*

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<sup>13</sup> London Gazette No 35949 of 23 March 1943, Hazard, Sergeant I H and crew.

*With respect, I am recommending this crew's Medals for Gallantry be upgraded to the Victoria Cross Australia or equivalent decoration, for each crew member. In my research I have never encountered a situation where an airman or airmen have been more deserving of this award than the crew of FH178. This is long overdue for the relatives and Australian citizens. They can hold their heads high and the crew of FH178 will not be forgotten with the passage of time.*

33. In his application, Dr Albrecht claimed the following context for the mission facing Pilot Officer Cowan and his aircrew:

*On July 21/22, 1942, the Japanese high command initiated a strategic assault on Papua New Guinea at Buna beach, with the intent of establishing a beachhead, landing a division of soldiers tasked with hacking a trail through thick rainforest jungle and treacherous, mountainous terrain, 100 miles to Port Moresby. The objective was to capture Port Moresby with its adjacent airfield to provide air cover for the next step— invasion of the Australian mainland in the state of Queensland.*

*On July 22nd, at 11:30 hours, P/O Warren Cowan and crew departed 7 Mile Drome in the vicinity of Port Moresby, detailed to shadow a cruiser force north of Buna. Over the target area they were unable to locate any enemy shipping. At 13:30 the last radio transmission was received from Lockheed Hudson FH178. No sighting or distress call was received after this. When P/O Cowan and his crew failed to return to Base they were officially declared Missing In Action (MIA)...*

*At 14:00 hours FPO1 Saburo Sakai and five squadron mates from Tainan Kōkūtai (Tainan Air Group) took off from Lae airstrip. They were equipped with the renowned A6M2 Zero and included some of the most combat experienced pilots in the Japanese Navy. At 14:45 this formation arrived over the Buna beach head.*

34. Dr Albrecht also provided the following account from Saburo Sakai:

*Buna was a shock to me on my first patrol. I had seen many landing operations before from the air, but never had I witnessed such a pathetic attempt to supply a full infantry division. Soldiers milled around on the beach, carrying cases of supplies into the jungle by hand. Only two small transports with a single small sub chaser as their escort stood off the beach unloading new supplies!*

*Flying cover for the beachhead proved eventually more difficult than anticipated. No longer did heavy cloud layers mean a day of comparative rest. On July 22, in a group of six Zeros, we flew wide circles in what appeared to be an otherwise empty sky. A thick overcast hung at 7,000 feet above the ground. Without warning a series of tremendous explosions rocked the beach area, and columns of flame and smoke erupted into the sky. Seconds later thick, greasy smoke boiled out of the critical supply dumps several hundred yards off the shore. No other planes could be seen. Either they had dropped their bombs through the overcast with spectacular*

*accuracy—which seemed highly unreasonable—or one or more planes had dropped below the clouds, released their bombs, and slipped back into the protection of the gray mass without being seen. The latter proved to be the case, for several minutes later I caught sight of a tiny speck moving out of the edge of the overcast, far to the southeast. We turned and pursued the fleeing plane which, as we drew closer, was identified as our old friend, the twin engined Lockheed Hudson. We were about a mile away when we were sighted. The bomber nosed down and fled along the coast, trying to make Rabi. Its speed was high, almost as great as that of our own fighters. I jettisoned the fuel tank and pushed the throttle to maximum over-boost.*

*From a distance of 600 yards and to the rear left, I fired a burst from all four guns at the plane, hoping the Hudson would turn and allow me to lessen the distance between our two planes. What happened next was startling. No sooner has I fired than the Hudson went into a steep climbing turn to the right, rolled quickly, and roared back with full speed directly at me. I was so surprised that for several moments I sat motionless in the cockpit. The next second every forward-firing gun in the Hudson opened up with a withering barrage.*

*Our Zeros scattered wildly, rolling or diving in different directions. Nothing like this had ever happened before! I caught a glimpse of Lieutenant Sasai; his jaw hung open in astonishment at the audacity of the enemy pilot. One Zero—piloted by Nishizawa, who refused to be impressed by anything—rolled out of his sudden breakaway and came down behind the bomber, his guns spitting flame. Again we were astounded. The Hudson heeled over in a snap roll, the fastest I has ever seen for a twin-engined plane. Nishizawa's guns sprayed only empty air.*

*The remaining pilots, myself included, hurled our planes at the Hudson. All of us failed to score a single hit. The bomber rolled and sawed up and down in violent maneuvers, with the top gunner firing steadily at our planes.*

*The Zero pilots went wild with fury. Our formation disintegrated and every man went at the Hudson with everything he had. I made at least four firing passes, and was forced to break off my attack by other pilots who screamed in without regard for their wing mates. For nearly ten minutes we pursued the Hudson, pouring a hail of lead and explosive shells at the amazing plane.*

*Finally a heavy burst caught the rear turret; I saw the gunner throw his hands up and collapse. Without the interfering stream of bullets from the turret, I closed in to twenty yards and held the gun trigger down, aiming for the right wing. Seconds later flame streamed out, then spread to the left wing. The pilot stayed with the ship; it was too low for him or the crew to bail out. The Hudson lost speed rapidly and glided in toward the jungle. Trees sheared off the two flaming wings and the fuselage, also trailing great sheets of flame, burst into the dense growth like a giant sliver of burning steel. There was a sudden explosion, and smoke boiled upward...<sup>14</sup>*

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<sup>14</sup> Letter, Dr John Albrecht to Defence, dated 28 September 2024.

35. Throughout the course of the review, the Tribunal was presented with various accounts of this action, all of which appear to be attributable to Saburo Sakai, and each of which is generally consistent with the above statement.

36. In making his case for further recognition, Dr Albrecht outlined some contemporaneous examples of the award of Imperial gallantry decorations to pilots and their aircrew. In particular, the case of the posthumous Victoria Cross for Pilot Officer Andrew Mynarski of the Royal Canadian Air Force, a gunner,<sup>15</sup> the Victoria Cross to pilot Lieutenant Robert Hampton Gray,<sup>16</sup> and the award of an *unprecedented and never repeated* five Conspicuous Gallantry Medals and a Distinguished Service Order to the pilot and crew of a Lancaster Bomber.<sup>17</sup>

### **Defence's refusal**

37. In its letter of 8 October 2024, sent in response to Dr Albrecht's letters of 9 and 10 September 2024 to the Minister, Defence explained that in 2018 the then Minister for Defence, the Hon Christopher Pyne MP, made a representation on behalf of the Cowan family that he posthumously awarded the Victoria Cross for Australia for the above service. The letter explained that Defence undertook a 'comprehensive review' endorsed by the Chief of Air Force and concluded that Pilot Officer Cowan and his flight crew *demonstrated gallantry when the enemy attacked them and delivered a highly effective counter offensive at Buna*.

38. The letter stated that the Defence review *determined a witness account was credible, and based on their description of the high level of coordinated manoeuvre of the Hudson aircraft, it took the entire crew to execute this responsive counter offense*. Defence stated that this information provided sufficient evidence the flight crew demonstrated gallantry in action in hazardous circumstances and therefore met the conditions for the award of the Medal for Gallantry. Defence's letter also mentioned that the next of kin for all four of the aircrew were very supportive of the award of the Medal for Gallantry and had accepted this posthumous honour on behalf of their relatives.<sup>18</sup>

39. In its letter of 21 October 2024, sent in response to Dr Albrecht's letter of 28 September 2024, Defence provided further detail regarding its 2018 consideration of the above service. It said:

*...following a request for review of eligibility for the Victoria Cross from Pilot Officer Cowan's family, Defence began a comprehensive review of his actions against the suite of gallantry awards. This review concluded that given the evidence available and the inability to ascertain the exact actions of Pilot Officer Cowan, as the*

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<sup>15</sup> *London Gazette* No 37754 of 8 October 1946 Mynarski, VC.

<sup>16</sup> *London Gazette* No 37346 of 13 November 1945 Gray, VC.

<sup>17</sup> *London Gazette* No 35949 of 23 March 1943 Hazard, Sergeant I H and crew.

<sup>18</sup> Letter, Defence to Dr Albrecht, dated 8 October 2024.



*pilot, the assessment could not establish the pre-requisites to meet the criteria for the award of either the Victoria Cross or the Star of Gallantry.*

*A subsequent review was conducted of the actions of the crew to determine if, through their combined contribution, any form of recognition was warranted. This review determined that the whole crew contributed to the complex aerobatic counter offensive manoeuvres that the solo aircraft performed in an aerial battle with six Japanese Zero fighters. There was sufficient evidence that the flight crew demonstrated gallantry in action in hazardous circumstances and therefore met the conditions for the award of the Medal for Gallantry.<sup>19</sup>*

40. Despite this statement, the Tribunal was presented with no evidence to suggest that Defence made any assessment of the above service against the eligibility criteria for the Star of Gallantry.

### **Dr Albrecht's application to the Tribunal**

41. In his application to the Tribunal on 10 October 2024, Dr Albrecht stated that he agreed with the decision to decorate this crew as a combat team, but that he strongly disagreed with the level of the award that the crew received, in comparison with that recommended by Sakai. Dr Albrecht also stated:

*Taking into account the actions taken by P/O Cowan and his crew that destroyed a vital enemy target and then having the courage to face head on a formation of Japanese fighters for a fight to the death, it is obvious they displayed extreme valour. They lost their lives in the process and quite likely started a sequence of events preventing enemy capture of Port Moresby and invasion of their Australian homeland. Two of this crew were married and had children.*

*On comparison with other recipients of the Medal of Gallantry it is apparent they are deserving of a higher ranking.*

42. Dr Albrecht again referred to the recognition afforded to Pilot Officer Mynarski and Lieutenant Gray, along with the Victoria Cross awarded to Group Captain Leonard Cheshire.<sup>20</sup>

43. Dr Albrecht stated that he realised the families had signed their acceptance of the awarding of the Medal for Gallantry for their relatives actions in combat with the enemy. However, he also stated that he did not believe this should be an obstruction to this crew being considered for the higher award of the Victoria Cross. He stated that they, their relatives and Australian citizens deserved nothing less.<sup>21</sup> Dr Albrecht also provided supporting material that was generally consistent with his letter to Defence of

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<sup>19</sup> Letter, Defence to Dr Albrecht, dated 21 October 2024.

<sup>20</sup> *London Gazette* No 36693 of 8 September 1944, Cheshire, VC.

<sup>21</sup> Application for review, Dr John Albrecht.

28 September 2024.

## The Defence report

44. In its report to the Tribunal of 4 February 2025, Defence stated that in response to Dr Albrecht's pre-Tribunal correspondence, it had *considered Mr Albrecht's application, an examination of the flight crew for the Victoria Cross for Australia identified the application did not contain any new information or evidence that had not previously been considered by Defence. Therefore, with no new evidence provided, Defence Honours and Awards relied on the outcomes of previous deliberations conducted by the Royal Australian Air Force: which concluded the Medal for Gallantry was the appropriate level of recognition for each member of the flight crew for their actions at Buna Beachhead, (Papua) New Guinea on 22 July 1942.*

45. Defence offered the following description of the service and mission of Pilot Officer Cowan and his aircrew:

*On 22 July 1942, the Hudson A16-201 piloted by Pilot Officer Cowan and the flight crew consisting of Pilot Officer Taylor, Sergeant Polack and Sergeant Sheard were ordered out for "shadowing" duty from Port Moresby, (Papua) New Guinea. 'Shadowing' involved following Japanese ships and attacking targets of opportunity.<sup>22</sup>*

*Over the beachhead at Buna, (Papua) New Guinea, Japanese wartime fighter ace Saburo Sakai and five other Zeroes from the Tainan Squadron, then based at Lae, were conducting aerial patrols when a series of explosions rocked the beach area.*

*The Zero Pilots established the source of the attack being the lone Hudson A16- 201 and after several minutes located and commenced pursuit of the Hudson A16-201. Details of the dogfight between the Zeros and the Hudson A16-201 are in an eye-witness account by the Japanese Zero pilot Saburo Sakai in the publication 'Winged Samurai'. Aviation historian Bob Piper notes in his article 'Zero ace honours his foes' published in Panorama 14 February 1998, the Hudson A16-201 undertook "violent manoeuvres and brilliant aerobatics, in a way that the makers of Japanese attackers never dreamed possible."*

*For nearly ten minutes the Hudson A16-201 was pursued before it succumbed to the attack by the Zero Pilots, losing speed rapidly and gliding towards inevitable impact before disappearing through the upper-most foliage resulting in the fatalities of the entire flight crew.<sup>23</sup>*

46. Defence provided a copy of the 1997 recommendation by Sakai, which reads:

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<sup>22</sup> While "attacking targets of opportunity" may not have been specifically stated in the mission statement of an individual RAAF flight, the Tribunal understood that, unless countermanded by that statement, it was a general expectation that crews who observed such an opportunity and assessed the risk to be acceptable would attack such a target.

<sup>23</sup> Letter, Defence to the Tribunal, dated 4 February 2025.

***Subject: Act of Extreme Bravery by Pilot Officer Warren F. Cowan***

*I, former Japanese Navy Zero fighter pilot, Saburo Sakai of Tokyo, Japan, offer the following testimony regarding my combat encounter with Pilot Officer WARREN F. COWAN and his crew, on July 22, 1942 over Buna, New Guinea.*

*On this date, I was part of a nine-plane formation of Zero fighters, led by Lieutenant (jg) Junichi Sasai, which sortied at 0800 from our Lae air base. Our mission was to provide air support for our resupplying effort on Buna.*

*As a front-line fighter pilot with over two hundred individual dogfights, eight years of combat experience, and over sixty Allied aircraft shot down or damaged in combat, I state with conviction, that WARREN F. COWAN's bravery and tenacity in the face of overwhelming odds greatly impressed us.*

*Our pilots marveled at his skill in handling his twin-engined aircraft and his unrelenting and very aggressive attacks against our fighters. He and his crew brought great credit to your Air Force and are worthy of recognition.*

*I recommend that Pilot Officer WARREN F. COWAN be posthumously awarded your country's highest military decoration. I have encountered many brave pilots in my life, but WARREN F. COWAN stands alone. Even though he was an enemy pilot, we respected him and considered him a real hero whom I remember to this day.<sup>24</sup>*

47. Along with other correspondence submitted to Defence in the course of its earlier considerations, in its report Defence provided a copy of an excerpt from 'Winged Samurai' which states:

*Aviators of exceptional ability have always impressed friends and foes alike. Of the many fine opponents Sakai fought against in the Papuan Campaign, only one has stood out amongst the rest in terms of sheer guts and flying ability – Pilot Officer Warren F. Cowan...*

*On the Japanese airfield at Lae, Lieutenant (jg) Junichi Sasai was ordered to provide air cover for a resupplying effort on Buna. At 0800 hours. Sasai led his nine-plane formation into the air. It was a dismal morning with low cloud cover.*

*The Zeros arrived over their assigned position after 40 minutes and flew wide circles around the beachhead. Cruising at 2,000 meters, Sakai was surprised to hear explosions down below. Thick black smoke was billowing high into the air and there was mass confusion on the beach. Cowan and his crew had scored some hits.*

*It was very strange, recalled Sakai, "I scanned the sky and saw nothing. But a few moments later, I saw a speck diving in the distance. I thought it might have been a B-25, a B-26, or a Douglas A-20. And he was going as fast as my Zero!"*

*Sakai opened full throttle and raced for the fleeing bomber. He was the first to reach*

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<sup>24</sup> Letter, Defence to the Tribunal, dated 4 February 2025



*effective firing range and opened up with everything, hoping to force the bomber into a turn. A Lockheed Hudson! As Sakai closed in, an unexpected thing happened. The Hudson suddenly whipped around in a tight turn and made a head-on attack against him, with all of its guns blazing! "Damn," muttered an incredulous Sakai as he was forced to break away. The Hudson roared past him.*

*The audacity of the enemy pilot proved too much for the Zero pilots to handle and they went wild with rage! It was now every man for himself as they threw themselves at the Hudson in wild disorder. Outnumbered nine to one, Cowan and his crew went on the offensive. His gunners were firing steadily as he kicked and shoved his bomber into violent manoeuvres, making repeated attacks against the Zeros. By pulling the power off one engine and opening up the other at the same time Cowan was able to execute the high speed turns which so confounded Sakai and his comrades.*

*Sakai made at least four firing passes, but failed to keep his gunsight on the bomber long enough to inflict any serious damage. With his flight crowding in, he feared a collision. Closing in to around 50 meters, he opened up with cannons and machine guns. Suddenly, gasoline came spraying out of the right wing tank, then the left. The rear gunner had collapsed over his guns and remained silent. Sakai's 20mm cannons stopped - out of ammo!*

*Closing in to 30 meters, Sakai concentrated his 7.7mm into the plane, firing over 200 rounds before it ignited in flames. Sakai watched with intense fascination as the pilot made a heroic attempt to bring his crippled bomber to a controlled crash landing from an altitude of 50 meters. It gradually descended into the jungle trailing a huge sheet of flames. Trees sheared off the wings and there was a gigantic explosion and a ball of flames. Sakai and his men couldn't help but marvel at the bravery of those men.<sup>25</sup>*

48. Defence also provided a copy of an article written by Bob Piper in a March 1996 edition of *Wings* magazine, which states, relevantly:

*It was over the beach head at Buna that this story begins. Several small transports stood off shore as supplies were brought to the shoreline and unloaded. On patrol above are Sakai and five other Zeros from the Tainan. Squadron, then based at Lae. They are flying lazy wide circles in what appears to them to be an empty sky. Thick clouds at 7,000 feet blanket the peaceful scene. Without warning a series of explosions rock the beach area Flame and smoke erupt skywards. The Japanese pilots above can feel the distinct staccato of the concussions. Supply dumps inland from the beach have been hit and yet the Zeros can see no other aircraft in the sky. Either some Allied aircraft has deposited its bombs with amazing accuracy through the clouds, which seems highly unlikely, or had dropped below the overcast, released its bombs and then quickly slipped back into the protection of the clouds. All this has happened before the bombs hit the ground and the Zero pilots can look up to*

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<sup>25</sup> Letter, Defence to the Tribunal, dated 4 February 2025.

*establish the source of the attack. One very agile Allied bomber has carried out the lightning quick attack and disappeared.*

*Several minutes later Sakai, still scanning the skies, sights a tiny black speck moving out of the edge of the overcast, far to the east. The race is on. Six Zeros on maximum boost are in pursuit. As they draw closer the fleeing aircraft is identified as their old arch enemy, the twin tailed Lockheed Hudson. These same light bombers have already despatched a fair number of Zeros in duels in and around the Lae-Buna area. The climbing Zeros have narrowed the distance to only a mile when the Hudson crew detect their approach from below and behind. Cowan lowers his aircraft's nose and accelerates away down the coast towards Milne Bay, with the Zeros in hot pursuit.*

*Now a Hudson at full throttle in a shallow dive was a fast and slippery aircraft at the best of times. The Japanese Zeros were discovering this again that day, and to shorten the distance were forced to jettison their auxiliary fuel tanks and maintain their engines at full throttle.*

*At six hundred yards the Zeros have only made up a little leeway and Sakai, in frustration, fires his two machine guns and pair of cannons. His hope is that this will cause the Hudson to turn a little and so shorten the distance. Six hundred yards is still too far for Sakai's guns to be effective. Then another shock for the pursuing Japanese. Hudson 201 wheels around in the tightest turn Sakai has ever seen for a twin engine aircraft. The bomber's front machine guns spit flame, as does another pair in its upper turret, as it whips back past the startled Zeros. The Hudson's snap turn has been possible when the pilot pulls the throttle off momentarily on one side, enabling the other engine to 'pivot' the bomber, virtually on its wing tip. Nishizawa, one of the other Japanese aces in pursuit, sprays his guns into empty air where the bomber should have been!*

*The well organised attack by the Zeros breaks up into a wild free for all. Not one of them manages to score a single strike against the elusive Hudson as it rolls and turns in violent manoeuvres and brilliant acrobatics, in a way that the makers or Japanese attackers never dreamed possible. All this time the bomber's upper gunner has continued to fire back steadily, forcing the Zeros pilots to keep their distance. Sakai makes at least four passes and is forced to break off his attack each time by other pilots who zoom in front of him at the last moment.*

*For nearly 10 minutes we pursued the Hudson, pouring a hail of lead and explosive shells at the amazing aircraft.' By this time the constant twisting and turning has taken the Hudson and its attackers back towards the Buna area. Finally an accurate burst of fire from one of the Zeros catches the mid upper gunner in his glasshouse turret. He is seen to throw up his arms and fall back. Most of the danger from the Hudson's defensive fire is now gone. Sakai closes in to only twenty yards and triggers a long, accurate burst into the right wing. Seconds later flames leap out and spread laterally across the left wing. The bomber's fuel tanks have been hit and the fire spreads rapidly. For the two pilots and pair of gunners there is no escape.*

*Too low to parachute no power to climb and no clearing below. Only the tall trees and jungle canopy to descend into. The Hudson loses speed rapidly and glides towards the inevitable impact. Trees shear off, the fuselage disintegrates and bursts into flames and disappears through the uppermost foliage. Only black smoke curls up above the trees to show the Zero pilots overhead the final resting place of the Hudson and her magnificent crew.*<sup>26</sup>

49. Defence confirmed that in 1997, Sakai contacted The Hon Bronwyn Bishop, then Minister for Defence Industry, Science and Personnel, and provided a signed statement for the recommendation of a posthumous award to Pilot Officer Cowan and his crew.<sup>27</sup>

50. Defence advised that along with representations to Minister Bishop, representations had also been made to Senator David Feeney, the then Parliamentary Secretary for Defence in June 2011.<sup>28</sup> Defence stated that these referrals focused on the Victoria Cross for Australia, the family was advised there was insufficient evidence to support the award.

51. Defence stated that in 2020, the Directorate of Honours and Awards - Air Force considered the actions of the flight crew as a collective effort in consideration with *the substantial evidence detailed by a first-hand enemy witness, Saburo Sakai from Japan*. It concluded the following:

a. *The account of Saburo Sakai matched the disappearance of the crew by time and location and satisfactorily documented the dogfight that beyond doubt resulted in the flight crew being killed in action on 22 July 1942.*

b. *It is a fully credible account. Rather than dismissing it due to it being an enemy view of the action, it was acknowledged by Air Force as highly credible given the respect conveyed by Saburo Sakai in identifying the skill of the Hudson A16-201 aircrew during the wartime action.*

c. *Saburo Sakai detailed how the Zero aircraft pursued and engaged Hudson A16-201 and the sheer surprise of the Zero pilots in having to respond to the outstanding skill displayed by the Hudson pilot and crew. Sakai revealed 'Our Zeros scattered wildly, rolling and diving in different directions, I caught a glimpse of Lieutenant Sasai, his jaw hung open in astonishment at the audacity of the enemy pilot'*

d. *The statements from Winged Samurai and other commentators do not positively identify Pilot Officer Cowan as the pilot, nor individual crew members for their actions. Based on the displayed high level of coordinated manoeuvre of the*

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<sup>26</sup> Excerpt from *Wings Magazine*, March 1996, provided in Defence Report.

<sup>27</sup> Defence report, dated 4 February 2025.

<sup>28</sup> Following a request by the Tribunal Secretariat, Defence could not locate a copy of the representation or Defence's response.

*Hudson, it can be concluded that Pilot Officer Cowan, as the plane captain, was acting with the entire crew to execute the responsive counter-offense to the amazement of the attackers.*

*e. The available evidence does not cast any doubt on the previous rejection of the Victoria Cross for Australia for this type of action. The Victoria Cross for Australia affords recognition to an individual who 'performs acts of the most conspicuous gallantry, acts of valour or self-sacrifice, or display extreme devotion to duty in the presence of the enemy'.*

*f. During this encounter, the action witnessed was construed by three reviewers to be a spontaneous crewed action and the most appropriate trained tactical use of the aircraft in the circumstances. In Saburo Sakai's account, he noted "it was not until the mid-upper gunner collapsed over his guns that they were able to prosecute their target", leading to a confident conclusion that the efforts of all on board were necessary during the dogfight.*

*g. Whilst there was undoubtedly an exceptional display of leadership and flying skill from the aircraft captain, the action of the entire crew was pivotal to the defence provided against the attacking Japanese flight of zeros.*

*h. The assessment concluded that consideration should be given to recognise all crew members of Hudson A16-201 with individual posthumous decorations.*

52. Defence also outlined that in 2020, Mrs Elizabeth Buchanan, Pilot Officer Cowan's daughter, had also made representations to have her father recognised with the Victoria Cross for Australia. These representations were made so far as Buckingham Palace, and to various Defence Ministers.

53. Defence stated that in 2021, it convened an out of session Historic Honours Review Board to consider the appropriate contemporary level of award to posthumously recognise the entire flight crew of the Hudson A16-201.<sup>29</sup> The board concluded:

*The available evidence does not support the award of a VC to PLTOFF Cowan. The VC affords recognition to an individual who 'performs acts of the most conspicuous gallantry, acts of valour or self-sacrifice, or displays extreme devotion to duty in the presence of the enemy'. During this encounter, the action witnessed was considered by reviewers to be a spontaneous crewed action and the most appropriate trained tactical use of the aircraft in the circumstances, and therefore not an individual act of valour or self-sacrifice.*

*In Saburo Sakai's account, he noted the outstanding tactical manoeuvre by the pilot but that 'it was not until the mid upper gunner collapsed over his guns that they were able to prosecute their target'. This allows the conclusion that it was a crewed action*

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<sup>29</sup> Defence report, dated 4 February 2025.

*to counter the formation Zero attack – all on board would have been involved in the highly responsive and coordinated aircraft manoeuvre. Whilst there was, undoubtedly, an exceptional display of flying skill from the aircraft captain, the action of the entire crew was pivotal to the defence observed and documented by Sakai.*

*The account of Sakai matches the disappearance of the crew by time and location. Sakai satisfactorily documented the dogfight that beyond doubt resulted in the downing of Hudson A16-201 piloted by PLTOFF Cowan.*

*It is a fully credible account.*

*Based on the displayed high level of coordinated manoeuvre of the Hudson, it determined that it took the entire crew to execute the responsive counter-offense.*

*The actions of the entire crew were not only gallant but also of enduring impact.*

*Under the Imperial system, only the Victoria Cross and Mentioned-In- Despatches can be awarded posthumously for actions in the presence of the enemy. However, under the Australian Honours system, all Defence honours can be awarded posthumously. Furthermore, the Valour Inquiry<sup>30</sup> determined for equivalency purposes, the Imperial Distinguished Flying Cross and Distinguished Flying Medal could equate to the Medal for Gallantry. The Mentioned-In-Despatches could be equated to a Commendation for Gallantry.*

*Taking all evidence and supporting documents into consideration, the out-of- session board agreed the actions of the entire flight crew should be recognised.*

*Noting the Valour Inquiry position on equivalency, it was recommended that the Chief of Air Force endorse the awarding of the Medal for Gallantry to all flight crew members. This resulted in Ministerial Brief for Action to the Minister for Defence Personnel recommending the posthumous awarding of the Medal for Gallantry to the each flight crew member of the Hudson A16-201.*

54. This recommendation was eventually accepted and acted upon, following a brief to the Chief of Air Force. While Defence did not provide a signed copy of the brief with the Defence report, it did provide an unsigned version which discussed distinguished service decorations for Pilot Officer Cowan and his aircrew.

55. In its latest assessment of the actions of Pilot Officer Cowan and his aircrew against the eligibility criteria for the Victoria Cross for Australia, Defence stated:

*The available evidence does not support the award of the Victoria Cross for Australia to the flight crew. The Victoria Cross for Australia affords recognition to an individual who ‘performs acts of the most conspicuous gallantry, acts of valour*

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<sup>30</sup> The 2013 Defence Honours and Awards Appeals Tribunal *Inquiry into recognition for past acts of naval and military gallantry and valour.*



*or self-sacrifice, or displays extreme devotion to duty in the presence of the enemy’.*

*During the encounter (the ‘dog fight’), the action witnessed was considered by reviewers to be a spontaneous crewed action and the most appropriate trained tactical use of the aircraft in the circumstances, and therefore not an individual act of valour or self-sacrifice.*

*As the eye-witness accounts and evidence do not positively identify Pilot Officer Cowan as the pilot or any of the flight crew for their actions, recognition for an individual who ‘performs acts of the most conspicuous gallantry, acts of valour or self-sacrifice, or displays extreme devotion to duty in the presence of the enemy’ cannot be applied and therefore it is determined the entire flight crew contributed to the responsive counter-offence. The out-of-session board conducted in 2021 determined a posthumous Victoria Cross for Australia should not be awarded to any specific individual from the flight crew. It concluded based on the evidence indicating superior performance and gallantry by the entire crew, the eligibility criteria for the Victoria Cross for Australia could not be established.*

*The Directorate of Honours and Awards has considered the assessment and decision made by the Directorate of Honours and Awards – Air Force in 2020 along with the additional comments provided by Mr Albrecht, contained in his Tribunal application, and support the decision that Pilot Officer Cowan MG, Pilot Officer Taylor MG, Sergeant Polack MG and Sergeant Sheard MG are not eligible for a retrospective awarding of the Victoria Cross for Australia.*

*Defence has determined that while the actions of the flight crew were of superior performance and gallant, the assessment of the Historical Honours and Review Board in 2020 was accurate. The historical evidence along with eye witness testimony supports the determination that it was not one individual’s actions that was the determining factor, but that all members of the Hudson A16-201 contributed to the overall actions.*

### **Dr Albrecht’s comments on the Defence report**

56. In his comment on the Defence report, Dr Albrecht revisited many of the points made in his earlier submissions, and set out his disagreement with Defence’s position that the Victoria Cross for Australia could only be awarded to an individual. He stated that it is quite possible to make the award to the four individual members of the aircrew, as was the case with the Medals for Gallantry. He also referred to the concept of ‘colonial discrimination’ in the awarding of decorations, as in his view there are many other similar examples of Commonwealth aircrews being overlooked.

### **Tribunal analysis**

57. The essence of Dr Albrecht’s submission was twofold:

- Saburo Sakai had recommended that the crew be awarded the nation’s highest honour; and

- the actions of the crew fell within the eligibility criteria for the Victoria Cross for Australia – that is, ‘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’.

58. While Saburo Sakai’s account of the facts of the encounter had previously been accepted by Defence as credible and was accepted as such by the Tribunal, the Tribunal was not prepared to give any substantive weight to his view as to the level of Australian medallic recognition that was warranted by those facts in the absence of either any evidence that he was aware of the relevant criteria or any analysis by reference thereto.

59. The actions of the crew to which Dr Albrecht referred were not only the interactions between the Hudson and the Japanese Zeros, but also it’s bombing of Japanese supplies on the beach at Buna before those interactions.

60. As noted above, Dr Albrecht submitted that

*On July 22nd, at 11:30 hours, P/O Warren Cowan and crew departed 7 Mile Drome in the vicinity of Port Moresby, detailed to shadow a cruiser force north of Buna. Over the target area they were unable to locate any enemy shipping.*

61. This tasking of the crew is confirmed in various official records, including the 32 Squadron Operations Record Book.<sup>31</sup>

62. However, it is apparent from Saburo Sakai’s account that, in addition to that shadowing function and whether or not they were able to locate any enemy shipping, the crew saw and took the opportunity within the scope of their duties to bomb Japanese activities on Buna Beach. In this regard Saburo Sakai said:

*Without warning a series of tremendous explosions rocked the beach area, and columns of flame and smoke erupted into the sky. Seconds later thick, greasy smoke boiled out of the critical supply dumps several hundred yards off the shore. No other planes could be seen. Either they had dropped their bombs through the overcast with spectacular accuracy—which seemed highly unreasonable—or one or more planes had dropped below the clouds, released their bombs, and slipped back into the protection of the gray mass without being seen. The latter proved to be the case, for several minutes later I caught sight of a tiny speck moving out of the edge of the overcast, far to the southeast. We turned and pursued the fleeing plane which, as we drew closer, was identified as our old friend, the twin engined Lockheed Hudson.*

63. In making these comments, Saburo Sakai did not advocate for any medallic recognition for the bombing at Buna Beach. His pleas for such recognition, both in the book *Samurai!* and in his specific recommendation of 1 February 1997<sup>32</sup>, were instead made for the subsequent engagement between Hudson A16-201 and the Japanese Zero fighters that

<sup>31</sup> Included in additional material supplied by Defence on 24 April 2025

<sup>32</sup> Attachment E to Defence Report

he described at some length.

64. In regard to the bombing of Buna Beach, Dr Albrecht said in his application to the Tribunal:

*... as a close knit team, this crew had persevered in bombing a strategic target that was destroyed and was most likely the one event resulting in the Japanese Army falling short of its objective of Port Moresby, the stepping stone to mainland Australia. In the end they would pay with their lives.*

and, at the hearing he said:

*This crew, and what they did in a single mission, they destroyed a build-up of ammunition and supplies for the invading Japanese at Buna Beach – they had a direct hit, destroyed it and quite likely impeded the progress of the invasion across to Port Moresby and then the leapfrog down to Townsville and the invasion of the continent of Australia.*

65. Dr Albrecht sought to impute to the bombing a strategic importance in the war in the Pacific which the Tribunal considered to be over-inflated. More importantly, in the view of the Tribunal that bombing, notwithstanding that it ran the risk of attracting unwelcome attention from Japanese aircraft, was simply the successful implementation of a role for which the crew was trained and qualified to undertake. As such, it was not of the nature that should attract medallic recognition.

66. Rather, the Tribunal considered that any medallic recognition should relate solely to the crew's interactions with the Japanese fighters. In this regard, the Tribunal was not prepared to give any great weight to Dr Albrecht's contention that the crew's actions met the relevant eligibility criteria as it was not supported by any analysis by reference to Australian jurisprudence of relevance. Dr Albrecht made reference to other cases in which an Imperial, Canadian or Australian Victoria Cross had been awarded, and these are discussed further below.

67. However, while the Tribunal thus rejected the essence of Dr Albrecht's submission in the terms it was put to it, this did not mean that it should affirm the Defence decision. The role of the Tribunal is to reach a concluded view as to what is the correct or preferable decision having regard to all the evidence. It was thus necessary for the Tribunal to consider whether or not the Defence decision was correct or preferable.

68. The essence of the Defence decision appeared to have been that:

- had Imperial awards been available, the actions of the crew would have been recognised by a Distinguished Flying Cross or a Distinguished Flying Medal;
- the Australian equivalent of those Imperial awards was the Medal for Gallantry; and
- the crew should therefore each be awarded the Medal for Gallantry.



69. While there is superficially a deal of rationale in this chain of logic, the Tribunal considered that it was flawed. This is because of what is known as ‘the posthumous gap’. The only Imperial defence honours that could be awarded posthumously were the Victoria Cross and the Mention in Dispatches. Intermediate honours such as the Distinguished Flying Cross or Distinguished Flying Medal could not have been awarded to the crew under consideration in this case. Those awards could only have been made if the crew had survived and accordingly the factual basis on which the Defence decision was based compared two quite different circumstances. Moreover, even if those Imperial awards could have been made under the Imperial system, the Tribunal considered that this chain of logic was unnecessarily circuitous because it failed to analyse the evidence by reference to the eligibility criteria specified for each potentially applicable Australian honour. Further, it appeared to the Tribunal that, once Defence had concluded that the actions of the crew were gallant, it had not gone on to provide any analysis as to whether the gallantry displayed by any or each of the crew was ‘conspicuous’ (and thereby possibly warranting the Star of Gallantry) or ‘the most conspicuous gallantry’ (and thereby possibly warranting the Victoria Cross for Australia).

70. Defence considered that the actions of the crew were a *spontaneous crewed action and the most appropriate trained tactical use of the aircraft in the circumstances, and therefore not an individual act of valour or self-sacrifice*.

71. The Tribunal agreed with the view that each of the crew would in all likelihood have contributed to the actions observed and recounted by Saburo Sakai. But that in no way precludes the performance of each crew member from being considered individually. While the Defence decision correctly noted that the Victoria Cross for Australia was to be awarded to an individual, that in no way implies (as appeared to be suggested in Defence documentation concerning the decision) that such an award cannot be made for an individual’s contribution to the team effort involved in what might have been a ‘spontaneous crewed action’.

72. In this regard, the Victoria Cross for Australia Regulations and the Gallantry Decorations Regulations are in common terms in specifying on whom the respective honours might be conferred. Squadron Leader Hall rightly agreed at the hearing that the Medal for Gallantry was equally an individual award that could be made for an individual’s contribution to a ‘spontaneous crewed action’ – were it otherwise, that honour would not have been available to be recommended by Defence, supported by the Minister and made by the Governor-General.

73. Accordingly, the Tribunal concluded that it was necessary to assess the available evidence as to what contribution was made to what Defence terms as the ‘spontaneous crewed action’ by each member of the crew. In his written submission after the hearing, Dr Albrecht stated as follows:

*Pilot: P/O Warren Cowan was the pilot-in-command of this aircraft. He would have*

*been belted in his seat from the beginning through to the crash landing into the jungle. I am confident at the point in the chase, when it became apparent they would not be able to outrun the six Zeros, he gave his crew the option of trying to take out as many of the enemy aircraft as possible. The decision was unanimous and he quickly briefed them on their individual roles. He would have advised them of the importance of crew teamwork and coordination to maximize their impact. This would have included minimal use of the intercom to observations and directions as to the whereabouts of enemy aircraft as the combat progressed. In addition to flying the aircraft, he had to be aware of the safety and welfare of his two crew members who would be unsecured in the fuselage, taking into account the violent aerobatics he anticipated would be required to maximize their longevity. As a result he would have given prior warning of his actions to these two members to minimize their risk of incapacitation due to concussion or fractures.*

*Air Gunner: Sgt Lauri Sheard was secured in his dorsal turret with a 360 degree view above the horizon. His task was twofold—ward off and if possible destroy enemy aircraft, as well as advising his Skipper of the location of enemy aircraft and instructions to avoid deflection shots. This accounted for the majority enemy fire slicing through empty air. Sadly, his luck could only last so long and it is most likely he was incapacitated by an attack that came from below his field of vision, not picked up by the other two in the fuselage. I do not know if this firing pass injured other crew members. However, this spelt the end of this crew's courageous effort.*

*Second Pilot/Navigator: Sgt Russell Polack may have stayed belted in his seat to give his Skipper moral support and a lookout for enemy aircraft within his field of vision. It is possible that he was ordered to remain in his position to minimize his risk of injury in the fuselage, allowing P/O David Taylor to move freely about.*

*Wireless Operator/Air Gunner: P/O Taylor would have had little use for his wireless training— unless sufficient time for a last minute MayDay! However, his skill and training as an air gunner were critical for him scanning for attacking aircraft, alerting his Skipper of location and providing avoidance instructions. In addition, if this Hudson variant had a ventral firing gun, he would have used it to fend off attacks from below. It is apparent he did not have time to remove Sgt Sheard from his turret and man his guns. It is also possible he was wounded in the initial attack.*

74. While the detail asserted by Dr Albrecht in this statement is not at all implausible, the Tribunal considered that it was nevertheless speculative given that there was effectively no contemporaneous evidence to substantiate that detail. The only eyewitness account of the engagement between the Hudson and the Zeros was that of Saburo Sakai.

75. While not included in the Defence report, Defence later provided the Tribunal with a copy of a 22 March 2019 email from Mr Michael Claringbould in which he stated that:

*Sakai's memoirs in his book 'Samurai' are largely fiction for many reasons including it is unclear the degree to which editor Martin Caidin embellished the word. Some of Sakai's other claims (eg aerobatics over Port Moresby) are fabrications.*

and:

*Given timings and locations involved it looks like the Zeros shot down the Hudson with no fuss and in short order.*<sup>33</sup>

76. Defence had access to, and Squadron Leader Hall said that it had considered, this email before it concluded that Saburo Sakai's account of the encounter was 'credible'. Given that Mr Claringbould's email provides no reasons or analysis to support his criticism of Sakai's book, the Tribunal similarly accepted that the account of the encounter was credible. This included an assessment, based on relative aircraft disposition and performance, that the duration of the engagement was, on balance, closer to the 10 minutes as recounted by Saburo Sakai than the *short order* as suggested by Mr Claringbould.

77. In a subsequent submission after the hearing, Defence said in relation to Saburo Sakai's book:

*Defence believes the quality of the information available in this matter will impact Tribunal's ability to apply its interpretation of the eligibility criteria outlined in the Norden review. The book by Saburo Sakai was written for commercial purposes. While Defence accepts the fundamental description of the high level of coordinated manoeuvres that were performed in executing the counter-offensive, some of the descriptive elements and conclusions contained in the account are open to interpretation.*

78. The Tribunal does not understand how Defence could claim that the book *was written for commercial purposes*. It may well be assumed the publisher hoped to make a commercial profit from publishing the author's work, but that does not necessarily impugn or distort the purposes of the author.

79. Moreover, Defence failed to detail which *of the descriptive elements and conclusions contained in the account are open to interpretation*.

80. Nevertheless, it is the case that Saburo Sakai's account did describe only the observed actions of the aircraft and the turret gunner and, quite understandably, did not identify which of the crew performed which role in the overall 'spontaneous crewed action'.

81. The aircraft in question was a Mark IIIA Hudson, configured with a single set of pilot controls.<sup>34</sup> Defence also advised that this model:

*was constructed with the ability for an additional 'ventral gun' [but] Air Force has not been able to confirm if this specific airframe was fitted with the weapon system and, if*

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<sup>33</sup> Email, Mr Michael Claringbould to member of Department of Defence, dated 22 March 2019.

<sup>34</sup> Just 21 RAAF Hudsons (across all four variants operated by the RAAF) appear to have been fitted with dual controls. As far as the Tribunal could determine, only one Hudson MkIIIA (A16-231) was fitted with dual controls. Nor could the Tribunal find any evidence to suggest that A16-201, or any other Hudson allocated to 32 Squadron, was ever fitted with dual controls.

*fitted, whether it was used.*

82. In this regard, the Tribunal subsequently learned that examination of the wreckage of A16-201 by an RAAF Armourer had identified a part described as an “Under defence gun Mark II X”, suggesting that a ventral gun had indeed been fitted (along with two amidships beam guns).<sup>35</sup> However, the Tribunal also noted that Saburo Sakai made no clear mention of fire from any such gun in his account of the air attack on the day in question.

83. The usual crew of such an aircraft would have comprised two pilots and two Wireless Air Gunners who, amongst them and in accordance with their qualifications and training, would have undertaken the roles of pilot, gunner, navigator and wireless operator.

84. It had appeared from the biographical details provided by Defence that:

- Pilot Officer Cowan completed pilot training and was posted as a pilot for flying duties;
- Sergeant Polack had enlisted as provisional Air Crew – Aircraftman and, after completing training at No 2 Elementary Flying Training School, he re-mustered as Sergeant Airman Gunner and later undertook navigation training;
- Pilot Officer Taylor had enlisted as provisional Air Crew – Aircraftman and that, after initial training, he took additional training at No 1 Wireless and Gunnery School and No 2 Bomb and Gunnery School before he re-mustered to Air Crew (Gunner) and subsequently Wireless Operator Air Gunner; and
- Sergeant Sheard enlisted as provisional Air Crew – Aircraftman and re-mustered to Air Crew (Gunner) and subsequently Wireless Operator Air Gunner.

85. Defence had concluded that Pilot Officer Cowan was the pilot at the controls on the day in question. Because there were omissions from and ambiguity in the biographical details provided in the Defence Report so far as they related to Sergeant Polack,<sup>36</sup> in response to a request from the Tribunal, Defence advised that:

*Sergeant Polack qualified as a pilot on 31 December 1941, and following this qualification he completed a Navigation course on 13 February 1942. Between 16 February and 13 March 1942, Sergeant Polack completed the Lockheed Hudson conversion course with a passing grade.*

*Air Force’s position remains that Pilot Officer Cowan was the primary pilot during the flight and likely in control of the aircraft during the action.*

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<sup>35</sup> NAA A705, 163/26/243 folio 43

<sup>36</sup> At paragraph 13 of the Defence Report

86. In the view of the Tribunal, notwithstanding that he was a pilot who was qualified to fly A16-201, it appeared likely that Sergeant Polack was undertaking the role of navigator for the flight as neither Pilot Officer Taylor nor Sergeant Sheard had undertaken navigation training<sup>37</sup>. The Tribunal also noted that Pilot Officer Cowan was listed as the aircraft captain on the mission in question<sup>38</sup> and, by virtue of the authority vested in that position, considered it highly unlikely that anyone other than the captain would have been at the controls throughout the operational phase of the mission.<sup>39</sup>

87. Accordingly, the Tribunal proceeded on the basis that Pilot Officer Cowan was indeed at the controls on the day.

88. In contrast, the Tribunal could not definitively discern which of Pilot Officer Taylor and Sergeant Sheard was deployed on the day as the gunner and which was the wireless operator, as both were mustered as Wireless Operator Gunners. Nor could it ascertain if any of Sergeant Polack, Pilot Officer Taylor or Sergeant Sheard might have fired the “Under defence gun” or a beam gun, or even if any such weapon was in fact fired.

89. Despite this, the Tribunal concluded that Sergeant Polack, Pilot Officer Taylor and Sergeant Sheard would likely have played an equally important role in what Defence had described as the ‘spontaneous crewed action’. While only one of them may have operated the gun turret, and while key tasks associated with their role were likely required of those acting as navigator and wireless operator at critical points throughout the encounter, each of them would likely have also played a vital role in attempting to remain visual with as many of the six attacking aircraft as possible, and either recommending or directing actions designed to thwart a succession of attacks to Pilot Officer Cowan and whoever was operating the turret gun (or any of the other guns).

90. However, the Tribunal considered that Pilot Officer Cowan’s contribution to what might otherwise have been a ‘spontaneous crewed action’ must have been discernibly different in nature. It was he who controlled the movement of the plane. While he would likely have given full consideration to and been guided by the observations relayed to him by the other crew members, as captain of the aircraft he was solely responsible for making decisions as to how best to manoeuvre the aircraft, whilst simultaneously undertaking this task and orchestrating crew actions. And, in so doing, the Tribunal considered that it was notable that:

- he did more than follow what Squadron Leader Hall said was the orthodox

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<sup>37</sup> The Tribunal noted that, consistent with this conclusion, Sergeant Polack was stated to be the “plane navigator of Lockheed Hudson A16-201” in the citations for the Medal of Gallantry he was awarded (albeit that those citations did not acknowledge his qualification as a pilot authorised to fly the Lockheed Hudson) – Attachment K to the Defence Report.

<sup>38</sup> *32 Squadron Operations Records Book*, dated July 1942.

<sup>39</sup> Consistent with the RAAF lexicon, the Tribunal uses the term ‘operational phase’ simply to delineate those elements of the sortie directly aligned with the achievement of mission objectives, from the ‘domestic’ phases of the flight such as the take-off and landing.

tactic in such circumstances, which was to descend to low level and to maintain best possible speed to the nearest safe haven, in the hope of out- running or out-lasting enemy aircraft;

- instead, rather than only follow that defensive option, he manoeuvred the aircraft into an offensive position against the enemy aircraft; and
- he apparently continued to aggressively manoeuvre the Hudson and frustrate (mostly) experienced fighter pilots over an extended period, a feat that in the Tribunal's view would have demanded above average flying ability, outstanding situational awareness, physical and mental stamina and the ability to very quickly prioritise and process large amounts of information from other crew members, whilst under duress.

91. Thus, while the Defence decision had regarded the contribution of each crew member as equally significant and had recommended that each should receive the Medal for Gallantry, for its part the Tribunal concluded that the contribution of Pilot Officer Cowan was more significant than that of the others.

92. The questions for the Tribunal were therefore:

- should each crew-member receive the same medallic recognition; or
- should Pilot Officer Cowan receive some higher level of recognition than the other members of the crew; and
- what was the appropriate level of recognition for each individual crew member – the Medal for Gallantry as conferred on the Defence recommendation, the next highest honour of the Star of Gallantry, or the Victoria Cross for Australia as originally sought in the application to Defence that led to the award of the Medal for Gallantry and as subsequently sought in Dr Albrecht's application.

93. The Medal for Gallantry is awarded in recognition of 'acts of gallantry in action in hazardous circumstances'.

94. The Star of Gallantry is awarded for 'acts of great heroism or conspicuous gallantry in action in circumstances of great peril'.

95. And the Victoria Cross for Australia is 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'.

96. The Tribunal considered that:

- there was no question that the acts of the crew were taken 'in action';
- it should be accepted that those acts were taken 'in circumstances of great



peril', given that they involved a single bomber attacked by a force of six fighters of far greater capability in terms of manoeuvrability, firepower and speed in a battle that eventually saw the Hudson downed with all lives lost; and

- accepting that each of the crew had acted with gallantry as reflected by the decision to award the Medal of Gallantry, the individual gallantry of Pilot Officer Cowan should be regarded as 'conspicuous' given its more significant nature when compared to the other members of the crew and thus met at least the eligibility criteria for the Star of Gallantry.

97. Having reached that position, the Tribunal then considered whether any or all of the crew met the eligibility criteria for the Victoria Cross for Australia.

98. At the hearing, the Tribunal referred to the statement of reasons in its decision in *Hulse and the Department of Defence re: Norden* [2022] DHAAT 11 in which it had reviewed previous decisions in relation to the Victoria Cross for Australia and sought to set out a more detailed explanation of the meaning that should be given to the eligibility criteria for that award. When Defence representatives were unable to say at that time whether or not Defence had any disagreement with that explanation, the Tribunal asked them to take that question on notice.

99. On 22 May 2025 Defence advised that:

*In order to respond to the Tribunal's question, Defence has reviewed Sections 67-91 of the Hulse and the Department of Defence re: Norden [2022] DHAAT. While Defence does not dispute some of the Tribunal's interpretation of the eligibility criteria, exercised specifically in relation to the outcome of the Norden matter, we provide the following comments:*

- *There remains a degree of subjective judgement in any particular case. Defence places significant weight on the merits-based deliberations of the chain of command in progressing and recommending individuals for honours. Additionally the soundness of a judgement relies on the quality of the evidence and personal accounts that are available, along with the knowledge and operational experience of the decision maker.*
- *While the definitions provided in the Norden report set a benchmark for the Tribunal to consider, there are no definitions in the medal regulations for Gallantry Decorations to allow flexibility in application. Each nomination should be considered as unique in its nature, with the military chain of command and eye witnesses best placed to provide commentary and recommendations on the actions of an individual or group.*

100. While Defence said that it did not dispute 'some' of the Tribunal's interpretation of the eligibility criteria, the Tribunal noted that it did not go on to dispute any of that interpretation. Rather, the balance of its submission, so far as relevant, related to how the

‘devotion to duty’ criterion might apply to this particular case.

101. As to the comments quoted above, the Tribunal notes that:

- while the eligibility criteria undoubtedly call for subjective judgement and are to be applied with the degree of flexibility required for a proper consideration of each individual case, nothing in the Tribunal’s statement of reasons in *Norden* suggested otherwise;
- while the Tribunal always places considerable weight on the views of those in the Defence chain of command, its statutory duty in any review is to arrive at its own independent view after having regard to all relevant considerations; and
- similarly, while the military chain of command and eye witnesses may be well placed to provide commentary and recommendations on the actions of an individual or group, it is the fundamental role of the Tribunal to apply the eligibility criteria, properly understood, to the facts as found by it on an assessment of all relevant evidence.

102. The following extracts from the *Norden* case encapsulate the essence of the explanation adopted by the Tribunal in that case:

*71. Read in the context of the Letters Patent, we consider that the eligibility criteria set out in the Regulations therefore require at least one of the following:*

- a) an act of the most conspicuous gallantry in the presence of the enemy; or*
- b) a daring act of valour in the presence of the enemy; or*
- c) a pre-eminent act of valour in the presence of the enemy; or*
- d) a daring act of self-sacrifice in the presence of the enemy; or*
- e) a pre-eminent act of self-sacrifice in the presence of the enemy; or*
- f) extreme devotion to duty in the presence of the enemy.*

*72. This then requires considerations of what these words and phrases actually mean. They appear to have no technical or “trade” meaning and thus should be afforded their ordinary meaning in English usage. But they also need to be read and interpreted in the context in which they appear, and as they interact and correlate with one another.*

*73. Dictionary definitions of “gallantry” include “courageous behaviour, especially in battle” (Concise Oxford Dictionary), “the quality of being brave when something is difficult or dangerous” (Cambridge Dictionary), “bravery shown by someone who is in danger, for example when they are fighting in a war” (Collins Dictionary) and “spirited and conspicuous bravery” (Merriam Webster).*

*74. In Hanuszewicz and the Department of Defence re: Cameron [2019] DHAAT 08 (confirmed and adopted in Barnett and the Department of Defence re: Sheean [2019] DHAAT 09 and Hulse and the Department of Defence re: Jensen [2020] DHAAT 15) the*



*Tribunal considered the meaning of the word 'gallantry'. It said:*

*The Tribunal considered that there is an expectation that all soldiers in battle conducting themselves in accordance with their training, will be acting bravely. The Tribunal considered that gallantry requires a higher standard of conduct than bravery and usually a special and additional element of courage, fearlessness, daring or heroism will have been demonstrated. What amounts to an 'act of gallantry', necessarily varies according to the individual circumstances of each action, and depending on many factors, including the level of threat, the person's training, role and responsibility, the risk to the individual and/or the group, and the consequences of undertaking, or not undertaking, the particular act. The Tribunal considered that the concept of gallantry is greater than collective or individual acts of bravery and above and beyond what was expected of an individual or group who were bravely doing what they were trained to do or expected to do as part of a role, rank or responsibility.*

*75. We consider that those words remain apposite and we adopt them for the present purposes.*

*76. To qualify for the Victoria Cross for Australia, an act of gallantry must be "most conspicuous". Dictionary definitions of "conspicuous" include "clearly visible; attracting notice or attention" (Concise Oxford Dictionary), "very noticeable or attracting attention" (Cambridge Dictionary), "clearly visible, obvious, discernible" (Collins Dictionary) and "obvious to the eye or mind; attracting attention" (Merriam Webster).*

*77. As to the concept of "most conspicuous", the Tribunal said in Hanuszewicz and the Department of Defence re: Cameron [2019] DHAAT 08 that:*

*The Tribunal considered that to be 'most conspicuous', in the circumstances, his actions would have needed to have directly drawn the attention of the enemy in which case there would have been no question that he was under direct fire from them.*

*78. The present Tribunal considers that, in saying that, the then-constituted Tribunal was not attempting to define the concept but rather to simply point out a factor that, in the circumstances of that case, indicated that the concept had not been met.*

*79. In a similar vein, in Sheean the Tribunal said:*

*the Tribunal considers that the enemy's intentions and direct actions would be relevant to a consideration as to whether an act of 'the most conspicuous gallantry' had been performed. Clearly, the Tribunal was not intending in that case to lay out a comprehensive statement of all the various considerations that might be relevant.*

*80. Whatever considerations are relevant in ascertaining whether an act is*

*conspicuous, it is inherent in the concept of “most conspicuous” that it must be compared to other acts that are conspicuous to ascertain whether it is “most conspicuous”. However, it seems clear to us that the concept does not require that each successive nominee for the Victoria Cross for Australia needs to have performed an act of gallantry that was more conspicuous than that of the last- awarded nominee. That is, we believe the Regulations do not embody an escalating eligibility criterion. Instead, we consider that they set out a constant criterion under which a nominee’s act of gallantry must be comparable to, or rank *pari passu* with, the acts of gallantry of other nominees who have been found to meet the criterion.*

*81. As to “valour”, dictionary definitions include “great courage” (Cambridge English Dictionary), “great bravery, especially in battle” (Collins English Dictionary) and “strength of mind or spirit that enables a person to encounter danger with firmness: personal bravery” (Merriam Webster).*

*82. Dictionary definitions of “daring” include “brave and taking risks” (Cambridge English Dictionary), “the courage to do things which might be dangerous or which might shock or anger other people” (Collins English Dictionary) and “venturesomely bold in action or thought” (Merriam Webster).*

*83. For an act of “valour” to be “daring” as required by the eligibility criteria, it seems to us to be necessary to not simply combine the dictionary meanings of those words. To do so would lead, for example, to a circuitous combined definition of “a brave act of great bravery”. Rather, it seems to us that the combination of “daring” and “act of valour” must, when read in context, necessitate that the act of valour must have some exceptional quality amongst other acts of valour.*

*84. That this is so seems to be confirmed by the alternative criterion of a “pre- eminent act of valour”. Dictionary definitions of “pre-eminent” include “surpassing all others” (Concise Oxford Dictionary), “more important or better than others” (Cambridge English Dictionary), “If someone or something is pre-eminent in a group, they are more important, powerful, or capable than other people or things in the group” (Collins English Dictionary) and “having paramount rank, dignity, or importance : outstanding, supreme” (Merriam Webster). Notably, there is some apparent conflict amongst these definitions – must a pre-eminent act be superior to all others, or only superior to others with which it is compared.*

*85. In Hanuszewicz the Tribunal said:*

*The Tribunal considered that to be ‘pre-eminent’, the act should surpass other comparable acts of valour and to be daring in these circumstances, his actions should be bold and have an element of audacity.*

*86. To the extent that that comment may be thought to suggest that each successive act of valour must surpass every other previous act of valour, the present Tribunal takes a*

*different view.*

*87. Consistently with our view of the phrase “most conspicuous”, we consider (as the Tribunal did in Sheean), that “pre-eminent” does not require that each successive nominee for the Victoria Cross for Australia needs to have performed an act of valour that was more eminent than that of the last-awarded nominee. We believe the Regulations do not embody an escalating eligibility criterion, but rather a constant criterion under which a nominee’s act of valour must be comparable to, or rank *pari passu* with, the acts of valour of other nominees who have been found to meet the criterion.*

*88. So far as “self-sacrifice” is concerned, in our view this does not require the ultimate sacrifice. At the same time, death in action of itself is not sufficient to meet this criterion for the Victoria Cross. Self-sacrifice must be either daring or pre- eminent. It must therefore involve a greater risk of death than that inherently involved in any service in the presence of the enemy. The degree of risk must thus be exceptionally beyond that. Consistently with other criteria discussed above, the Tribunal considers that the nominee’s actions must have involved a risk of death comparable to, or ranking *pari passu*, with that displayed by other nominees who have been awarded against this criterion.*

*89. As to “extreme devotion to duty”, in Hanuszewicz the Tribunal said:*

*As to whether his actions were in the nature of ‘extreme devotion to duty’, the Tribunal was satisfied that Second Lieutenant Cameron was bravely doing his duty as a Troop and Crew Commander. The Tribunal noted that Second Lieutenant Cameron’s evidence suggested that his course of action was well considered and he had thought through the risks to his personal safety and the risk to the group and to Trooper Cadge of him not taking action. Second Lieutenant Cameron was trained to lead the Troop and reacted bravely after weighing his options, deciding on a course of action and mitigating the risk. In the Tribunal’s view, Second Lieutenant Cameron was doing his duty. He did not go above and beyond what was expected of him as a leader and commander, so the performance of his duty in the view of the Tribunal could not reasonably be considered as extreme devotion to duty. Consistently with that, the Tribunal considers that the devotion to duty displayed by a nominee must, to be “extreme”, be exceptionally beyond performance of what could reasonably be expected of a member in the course of their duty in the circumstances in question.*

103. In seeking to apply these interpretations and explanations in the present case, the Tribunal came to the following conclusions:

- while the actions of each of the crew were gallant, the level of that gallantry was not at the ‘most conspicuous’ level because it was not comparable to and did

not rank *pari passu* with the acts of gallantry of others who have been found to meet the criterion. For example:

- in the case of *Norden* referred to above, Private Norden ventured out on three occasions from a position of relative safety in an endeavour to save wounded colleagues in circumstances where, had he not done so and instead remained where he was, there could have been no assertion that he had not fully met his duty; and
  - in the case of *Sheean* to which Dr Albrecht made reference, Ordinary Seaman Sheean chose to disobey an order to enter a lifeboat and abandon a sinking ship under aerial attack and instead stayed aboard to man a gun in an endeavour to save the lives of comrades being strafed by enemy aircraft while they were in the water.
- In contrast, each of Pilot Officer Taylor, Sergeant Polack and Sergeant Sheard had effectively no option but to do what they did in circumstances over which they had no direct control – that is, once the Zeros attacked their aircraft, and once Pilot Officer Cowan decided to turn to face the enemy rather than simply seek to out-run it.
  - The situation of Pilot Officer Cowan was somewhat different in that he did exercise the option of turning the aircraft around to adopt an offensive posture, but he may well have thought that he had little or no option to do otherwise due to the performance superiority of a Zero over a Hudson in a protracted pursuit;
  - while the acts of each of the crew might be described as valorous, none were properly to be described as at the level of ‘daring or pre-eminent’ because those acts were not comparable to and did not rank *pari passu* with the acts of valour of others who have been found to meet that criterion. Although the Tribunal in *Hanuszewicz* had said that *to be daring ... his actions should be bold and have an element of audacity*, that phrase is to be read in the full context of what was said there. The Tribunal used that terminology in relation to an act that surpassed *other comparable acts of valour* and said that it was *in these circumstances* that *actions should be bold of have an element of audacity* to be daring. While it may indeed be said in the case of Pilot Officer Cowan that his actions in turning the aircraft around to attack the enemy were bold and had an element of audacity, the Tribunal considered that the degree of that boldness and audacity was not at the level required to meet the composite eligibility requirement that actions be ‘daring or pre-eminent’. Again, a comparison with the cases of *Norden* and *Sheean* is apposite. In each of these cases, the recipient had exercised a choice to undertake an almost certainly fatal action not required of them by the circumstances in which they found themselves. But, in the present case, the crew of the Hudson effectively had no choice but to seek to

outrun or destroy the enemy aircraft. In this regard, Dr Albrecht noted in his post- hearing submission as follows:

*There can be no doubt the four members of this crew knew they were in extreme peril for their lives. Their chances of survival were none existent— they were confronted with certain death, with no one to bear witness to their extreme gallantry and valour.*

- while the crew each lost their lives, this was not the result of a ‘daring or pre-eminent’ act of self-sacrifice because their loss of life came about as a result of the attack by the enemy aircraft and not because they had chosen to do something over and above what was called for in the circumstances in which they found themselves; and
- while each of the crew may readily be accepted as having been devoted to the performance of their duty, there is nothing to indicate that the level of this devotion was ‘extreme’ because, again, they had not chosen to do something over and above what was called for in the circumstances in which they found themselves.

104. In the view of the Tribunal:

- while Pilot Officer Taylor, Sergeant Polack and Sergeant Sheard acted with gallantry, they effectively had no option but, to the greatest extent possible, to assist Pilot Officer Cowan in saving the aircraft; but
- while Pilot Officer Cowan did exercise an option by seeking to attack rather than simply adopting the orthodox tactic and attempting to outrun the enemy, and his gallantry was therefore somewhat greater and thereby ‘conspicuous’, the gallantry he displayed was nevertheless not at the level of the ‘most conspicuous’.

105. In various other matters before the Tribunal, Defence has repeatedly asserted that defence honours are awarded on the merits of the individual case and that the concept of precedent has no application. The Tribunal accepts that each case is to be assessed on its individual facts and that it would be extremely rare that the facts of any two cases were indistinguishable. It also accepts that the concept of precedent has no application in the sense that precedent as it is understood in the judicial system. However, the Tribunal also notes that the 1993/94 Committee of Inquiry into Defence and Defence Related Awards (commonly referred to as the CIDA Inquiry) developed a number of important principles which underpinned its recommendations, all of which were accepted by the Government of the day. Of those principles, the most relevant for present purposes was as follows:

*3. To maintain the inherent fairness and integrity of the Australian system of honours and awards care must be taken that, in recognising service by some, the comparable service of others is not overlooked or degraded.*

106. While the terms of reference of that Committee confined its scope to defence awards and it ‘was not to inquire into honours or awards of gallantry or meritorious or distinguished service for individuals or units’, the Tribunal nevertheless considered that the concept underlying that principle was equally apposite to defence honours. The integrity of the entire defence honours and awards system would be called into question if it was pervaded by inconsistent treatment of comparable service.

107. Consistently with the underlying concept of that principle, the Tribunal has reviewed the citations issued in connection with a number Victoria Cross medals issued for Air Force service. In particular, it has considered the citations for:

- Wing Commander Geoffrey Leonard Cheshire;<sup>40</sup>
- Wing Commander Hughie Idwal Edwards;<sup>41</sup>
- Lieutenant Robert Hampton Gray;<sup>42</sup>
- Flight Sergeant Rawdon Hume Middleton;<sup>43</sup>
- Flight Lieutenant William Ellis Newton;<sup>44</sup> and
- Pilot Officer Andrew Charles Mynarski.<sup>45</sup>

108. While the Tribunal observed some broad similarities between the service recognised on those occasions and that of the crew now under consideration, it considered that, looking beyond those broad similarities, the facts of the service in each such case were clearly different on various grounds and thus not ‘comparable’ with that in issue in the present matter.

109. Further, the Tribunal looked for but found no case in which the crew of a lone non-fighter type aircraft attacked by a multiple enemy fighters had been awarded a Victoria Cross. For example, circumstances not-dissimilar to those under consideration in this case (save that the crew survived and honours between the Victoria Cross and the Mention in Dispatches could be considered) led to the award of the Conspicuous Gallantry Medal (Flying), rather than the Victoria Cross, to Flight Sergeant George Frederick Dove, Sergeant Ivan Henry Hazard, Sergeant William Ernest Williams, Sergeant James Fortune Bain and Sergeant Leslie Airey.<sup>46</sup> Defence provided a list of other cases of a lone aircraft under attack which had led to the award of an honour below the level of the Victoria Cross.<sup>47</sup> And, in

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<sup>40</sup> *London Gazette* No 36693 of 8 September 1944, Cheshire, VC.

<sup>41</sup> *London Gazette* No 35225 of 22 July 1941, Edwards, VC.

<sup>42</sup> *London Gazette* No 37346 of 13 November 1945, Gray, VC.

<sup>43</sup> *London Gazette* No 35864 of 15 January 1943, Middleton, VC.

<sup>44</sup> *London Gazette* No 36215 of 19 October, Newton, VC.

<sup>45</sup> *London Gazette* No 37754 of 8 October 1946, Mynarski, VC.

<sup>46</sup> *London Gazette* No 35949 of 19 March 1943, Flight Sergeant Dove; Sergeant Hazard, Sergeant Williams, Sergeant Bain, Sergeant Airey CGM (Flying). Email, Dr Albrecht to DHA Review Board dated 27 September 2024.

<sup>47</sup> Comparable awards-Lone aircraft under attack, Defence Report.



correspondence with the Tribunal, Dr Albrecht said *I realize that it would be unprecedented to award four VCs to one crew for their actions.*<sup>48</sup>

110. As a result, the Tribunal concluded that none of the other cases it reviewed suggested that the position it had reached in this case was inconsistent with prior awards or incorrect.

111. On consideration of all the available evidence, the Tribunal therefore concluded that, while the actions of each of the crew in this case were undoubtedly of an extremely high order, the actions of none of them (including the more gallant actions of Pilot Officer Cowan) met the criteria for the Victoria Cross for Australia. In its view, this conclusion was driven both by application of the explanation of the eligibility criteria set out in the *Norden* case, and by the lack of any ‘precedent’ award on ‘comparable’ facts.

112. It is however important to stress that, while concluding that the actions of the crew did not meet the exceptionally high level required for an award of the Victoria Cross for Australia, this implied no denigration at all of their actions for which Australia should be rightfully grateful and their families very proud.

### **Tribunal decision**

113. In light of all of the above, the Tribunal decided:

- to affirm the Defence decision that Pilot Officer David Read Taylor MG, Sergeant Russell Bradburn Polack MG and Sergeant Lauri Edwin Sheard MG not be recommended to be awarded the Victoria Cross for Australia in lieu of the Medals for Gallantry they had each received; but
- to recommend that the Minister should recommend to the Governor-General that Pilot Officer Warren Frank Cowan MG should be awarded the Star of Gallantry in lieu of the Medal for Gallantry he had been previously awarded.

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<sup>48</sup> Email, Dr Albrecht to DHA Review Board, dated 27 September 2024.