Subject: Defence Response to Public Calls for Retrospective Award of the Victoria Cross for Navy Personnel

Purpose:
To inform you of the Defence position regarding the lobbying for retrospective and posthumous awards of the Victoria Cross for Navy personnel and to seek your agreement to formally task this inquiry to the Defence Honours and Awards Appeals Tribunal.

Key Points:
1. There has been public interest recently surrounding possible Navy acts of valour that occurred primarily during World War II. This matter was the subject of discussion at the 19 October 2010 hearing of the Joint Standing Committee on Foreign Affairs, Defence and Trade. Also raised were Private Simpson and Gunner Cleary. The Senate Estimates extract relating to the Victoria Cross issues as provided at Attachment A.

2. The Victoria Cross for Australia (VC) is the pre-eminent Australian decoration for valour. It is awarded by approval of the Sovereign on the recommendation of the Prime Minister, under cover of a letter from the Governor-General.

3. Calls for the retrospective award of the VC for a number of Australian Defence Force veterans from former conflicts frequently emerge from both Defence Associations and the general public. In this case, attention has mainly focused on naval veterans and Captain Hec Walker specifically although the debate has since broadened to a more general appeal for recognition of valour for Navy veterans. This includes veterans from past conflicts whose actions are considered worthy of recognition either where no award was previously made, or where the recognition or award given is now considered to have been insufficient in the circumstances for the action undertaken. Albeit the question of Private Simpson and Gunner Cleary also regularly enter the debate.

4. In response to public calls for action on these matters, the most prudent course of action would be for you to write to the Chair of the Defence Honours and Awards Appeals Tribunal, Emeritus Professor Dennis Pearce AO, inviting him to consider an investigation into individual Navy cases of valour. As it is difficult and unwarranted to seek unique treatment for Navy personnel when considering representations have been made on behalf of other former Australian military personnel, the inquiry should involve a wider review of potential VCs. A draft letter and proposed Terms of Reference is at Attachment B. A nominal roll of former Australian Defence Force personnel whose actions and recognition may be subject to review is at Attachment C.

5. While it is preferred that the inquiry have a wider Defence focus, the Chief of Navy has offered the research resources of the Sea Power Centre Australia to assist in any work to support the Tribunal’s investigations. Army has also offered the resources of the Army History Unit and, if necessary, the Air Power Development Centre would also be available.

6. In response to questions raised by your office on 25 October 2010, the policy advice regarding the award of the VC is provided at Attachment D.
Recommendation:

That you:

i. Note the public interest surrounding retrospective and posthumous awards of the VC.
   Noted / Please Discuss

ii. Note that for reasons of transparency, reputation and legitimacy, the best way forward is for you to write to the Tribunal inviting it to investigate the case for award of the VC for distinguished war veterans, including Navy, Army and Air Force if applicable.
   Noted / Please Discuss

iii. Note the Defence single Service research resources will be available to assist in the Tribunal’s investigations.
   Noted / Please Discuss

iv. Sign the enclosed letter to the Chair of the Defence Honours and Awards Appeals Tribunal.
   Signed / Not Signed

Approved By:

A.G. HOUSTON
ACM
CDF

[Signature]

27 February 2011

Contact Officer: Mr Pat Clarke
Phone: 02 62661009

Primary Addressee

David Feeney

Information Addressee

Stephen Smith
Warren Snowdon
Jason Clarke

Resources:

7. Resources from Defence research agencies would be required to assist the Tribunal.

Consultation

8. Navy, Army and the Defence Honours and Awards Appeals Tribunal were consulted.

Attachments:

A. Senate Estimates extract relating to the Victoria Cross issues.
B. Draft Letter to the Tribunal Chair and proposed Terms of Reference.
C. Nominal roll of ADF personnel for VC consideration.
D. Policy Regarding the Award of the VC.
CHAIR (Senator Mark Bishop)—Good morning. I declare open this meeting of the Senate Foreign Affairs, Defence and Trade Legislation Committee. I welcome, Senator Evans, the Minister representing the Minister for Defence. I welcome also Air Chief Marshal Angus Houston, Chief of Defence Force, Dr Ian Watt, Secretary of the Department of Defence, and officers of the defence organisation. Today the committee will examine the budget supplementary estimates for the Defence portfolio in the following order: the defence organisation until 6 pm today, followed by Defence Housing Australia from 6 pm until 6.30 pm today. We will conclude with the Department of Veterans’ Affairs from 7.30 pm onwards this evening. Topics nominated by senators will be considered in the order set out in the agenda. Friday, 10 December 2010 has been set as the date by which answers to questions on notice are to be returned.

Senators should provide their written questions on notice to the secretariat by close of business Thursday. Depending on the findings in that particular report, as a health organisation we will be making recommendations back to the DDF and the service chiefs should those findings indicate that there may be no advantage or some disadvantage in recruiting.

It is very much a multifactorial approach. The nutrition standards are constantly being reviewed. We have an organisation that researches nutrition standards. I feel when it comes to the Australian Defence Force approach to nutrition it is completely different to the US approach to nutrition. We do not have Burger King on bases. We have healthy eating on bases.

There are other service countries’ data that we have also become privy to over the last three weeks and I am happy to share that with you. Some Canadian data is very alarming in fact. It is much higher than the US and Australian rates. I think we are looking at an international issue that we really do have to put some effort into.

Our initial focus is going to be in the alcohol space. We will be doing pilot and cultural surveys of the organisation to scope out what the individual’s attitudes are in relation to alcohol and how we can change that as not only a health and wellbeing but a cultural issue within the organisation. I hope that gives you some idea of our multifactorial approach.

Senator Barnett—Can I head to the Victoria Cross medal and why we do not have any VC medals for an Australian season. Of the 97 VCs awarded to Australians, 94 have gone to members of the Australian Army, four have gone to airmen and of course none to personnel of the Royal Australian Navy. By comparison, 117 VCs have been awarded to members of the Royal Navy out of the total of 1,353 VCs that have been awarded since 1856. Similarly, out of the 94 Canadians who have received a VC, four were airmen.

Of the 25 VC winners from New Zealand, one was a seaman, William Edward Sanders. There have been a number of reasons put forward as to the reasons why this has occurred in Australia. The most often cited reason for the lack of a VC being awarded to a member of the RAN concerns administrative factors and a possible lack of will by some British and Australian naval officers. Until approximately December 1942—this is my understanding and the evidence I have been given—gallantry awards for the RAN were decided on by the Admiralty in London. Can confirmation be given to that and any other reasons why that is the case?

In particular I wanted to raise a couple of nominees for consideration that are on the public record. Ordinary Seaman Teddy Shean was on the Arnhem. There were 49 survivors out of 149 and he, as you know, strapped himself to the guns as the ship went down, shooting at the Japanese Zeros to protect his mates who were in the water being fired upon and people could see the light of the ammunition going off as the ship sunk below the water. All the evidence suggests that he should posthumously be awarded a VC. That is a view that I hold and I know many others, including in this parliament, hold. I ask for further consideration of that.

Secondly, Captain Hec Walker was on the Perth in 1942 where 218 of the 700 survived. That battle was in the Java Sea in the Sunda Strait. There are a couple of others that have been suggested: Captain Henry Stoker, World War I—he was the captain of the submarine in the Dardanelles—and Lieutenant Commander Robert Rankin who was on the Farn, which sank in March 1942. Thirteen of the 1151 survived.
I wonder if we could address that initial question and then perhaps go to the nominees?

Air Chief Marshal Houston—I guess we will take on board your thoughts and have a look at it, but we do not generally look at these things retrospectively because it creates all sorts of other follow-on difficulties for us. But, given what you have raised this afternoon, we will take a look at it and come back to you as to the way ahead.

Senator Barnett—if you could outline the method of your review to consider the views that I have put, and certainly the views I know of others not just in this parliament but in the community, I would welcome that. I am aware of the end of the war list and the push to have that reopened. That is one method perhaps of dealing with those matters. There are other methods, including legislative methods through the parliament. But I would welcome your indication to this committee as to what type of review you might consider appropriate in taking on board my views and the views of others.

Air Chief Marshal Houston—One of the difficulties we have here is that first of all there needs to be a recommendation from somebody who was there, and that is generally a senior officer—a commander who was on the spot. Then there is a requirement for three eyewitness statements that relate to why this individual should be recognised for heroism with the award of a Victoria Cross. But we will take on board yours—

Senator Barnett—Could I just respond to that very quickly? In terms of Ordinary Seaman Teddy Sheean, my understanding is that you have all that evidence. You have that corroborated. You have the detail of his act of bravery, which was something quite outstanding. That is on the record. It is known. There were witnesses. There are witness statements. Commendations have already been granted for Teddy Sheean, so that is on the public record. In fact I know that has been raised previously in the parliament by Mr Sidebottom, who is the federal member for Barden.

Air Chief Marshal Houston—in response to some of those representations, we have had extensive searches of the archives both in Defence and also in the Australian War Memorial and to date we have found no recommendations for any nominations for RAN staff, naval staff, to be awarded the VC. But we will have a look at it and come back to you with a response. I think we should do that, given your representation here this afternoon.

Senator Barnett—I wonder if Vice Admiral Crane would care to comment or respond? Do you feel disappointed on behalf of your colleagues, or personnel, that this is the situation we are currently in? Do you agree that it was the Admiralty in London who did not act prior to 1942? Is that one of the key reasons why nothing happened prior to 1942? Perhaps you could answer that question.

Vice Adm. Crane—Firstly, let me go back to the lack of any VCs in the RAN. I think that is an issue that we do need to look at. It is difficult to rationalise why that might be the case. As you have pointed out, it is a fact that up to and including the Second World War the process for a service award for, in particular, the Royal Australian Navy went through the Admiralty. My understanding, as the CDF says, is that we cannot locate any recommendations in relation to the award of a VC. The individuals that you have noted are certainly outstanding people and we have recognised them in our Navy in many other ways.

The names of Sheean, Walker, Stoker and Rankin are embedded in our heritage. Certainly their acts and their service are well recognised. I would certainly support the CDF’s view that we need to go and have a look at how we might be able to correct this particular issue.

I understand that there may be a way forward. Things have changed now for the honours and awards areas in Australia, and perhaps there is an opportunity for us to relook at what we might do. But I also support the CDF’s view that we are talking about events that in Stoker’s case are nearly 100 years old. That is going to be a challenge. It is not impossible, but it is going to be a challenge.

Senator Barnett—Understood, but of course in Stoker’s case it is my understanding that the captains of the two other submarines were granted a VC. But in the exact same situation Captain Henry Stoker was
not granted a VC and it seems to me that it was an administrative stuff-up where there was a lack of will at the Admiralty House in London, and it is as simple as that.

Turn 39
(4.51 pm)
### Please check — ###.59.41 province in Afghanistan, sounds like Nahr-e Sawand, not check, not supplied

Vice Adm. Crease—I did not raise Stoker in any way, shape or form to suggest that he might not be one we look at. It was simply to perhaps reiterate the challenge of time, which we will have to overcome somehow.

CHAIR—Prior to the last election the government took a proposition about the creation of some sort of independent body or tribunal. Does that have a role in this?

Air Chief Marshal Houston—That is exactly where we are going to go. We have an independent honours and awards tribunal and we will refer this particular case, this representation that the Senate has made on behalf of naval personnel, to that committee. I do agree with him, the like of Sheean, Walter, Stoker and indeed several others in the Navy—their actions under fire were just unbelievable and they should perhaps be recognised. I do not want to raise expectations. There are very strict rules associated with Victoria Crosses and at the end of the day the final approval has to go to Buckingham Palace, and there is a very rigorous process associated with it. We will let the Honours and Awards Tribunal have a look at it and obviously we will go forward from there. We will come back to you and let you know how that process goes.

Senator Barnett—I thank you for your feedback and a positive response in that sense. I am aware there is a national tour of VC medals by the Australian War Memorial at the moment, which is a tremendous thing that is happening around Australia—including coming to Tasmania—for which I am very appreciative, and it recognises Harry Murray VC, Australia’s most highly decorated soldier emanating from Tasmania. I should mention, obviously, that John Simpson and Gunner Albert Cleary have not been granted VCs and I know there are issues regarding those two as well. Did you want to reflect on those two?

Air Chief Marshal Houston—Yes, I would reflect on that. The John Simpson one has been around for a long time, and a lot of people would strongly support some sort of recognition for those two. However, we came up against a number of limitations and constraints in terms of the award of a VC, particularly after so much time and given the very strict rules that apply to the award of VCs. So I guess, again, I think those have been looked at exhaustively and we will take on board your representation.
Dear Professor Pearce

I write concerning the recent public debate which has emerged following the publication of Mr Mike Carlton’s account of the World War II Cruiser HMAS Perth, commanded by Captain Hec Waler DSO and Bar, RAN, which was lost in the Battle of Sunda Strait on 1 March 1942. The book in question is titled “Cruiser: The Life and Loss of HMAS Perth.”

This public debate subsequently became the subject of discussion at the 19 October 2010 hearing of the Joint Standing Committee on Foreign Affairs Defence and Trade, and Defence undertook to explore these public calls. As the debate unfolded, the focus extended beyond the matter of retrospective award of the Victoria Cross to Captain Waler, in recognition of his actions on that fateful day in March 1942, to include retrospective awards for valour for other Navy veterans from past conflicts, and for Private Simpson and Gunner Cleary.

While Defence has historical records of the actions of a number of its veterans from past conflicts, it has not been within the remit of Defence to have these past actions re-investigated for the purpose of retrospective awards for valour. The action by Government to establish the Defence Honours and Awards Appeal Tribunal would now appear to provide the opportunity for an independent investigation of the matters which are the subject of contemporary public debate. I draw this conclusion from a reading of the Tribunal’s directive which gives it the power to 'consider issues arising in the area of Defence Honours and Awards.'

I therefore request that you consider undertaking an investigation of the Captain Hec Waler case, as well as the cases of those Navy and Army veterans from past conflicts in the list I have enclosed. I understand that such a request is a sizeable undertaking and I offer the Defence research resources to assist you and the other Tribunal members in their investigations and deliberations.
In order to assist your deliberations I have attached broad Terms of Reference for your consideration.

I look forward to hearing from you.

Yours sincerely

DAVID FEENEY
Encl
LIST OF POTENTIAL CANDIDATES FOR RETROSPECTIVE AWARD OF THE VC OR OTHER VALOROUS AWARDS

Henry Hugh Gordon Bacre Stoker - Lieutenant Commander Stoker was a Royal Navy officer and the commander of the submarine AE2, the first allied vessel to successfully pass through the Dardanelles in April 1915. AE2 was subsequently scuttled after receiving damage from a Turkish gunboat and the crew taken prisoner. The full story of Stoker’s accomplishment was not revealed until after the war. Although other submarine commanders received the VC for comparable efforts Stoker was awarded the DSO in April 1919. There is some evidence in Turkish and German sources that AE2 waved a white flag or sheet to ensure the crew were not fired at while in the water. This was interpreted by the Turks as surrender. No VC has ever been awarded to an officer who surrendered his ship.

Dalmorton Joseph Oweadale Rudd - Leading Seaman Rudd participated in the battle for the award of a VC as the actions of his unit in the Zeebrugge raid on 22/23 April 1918 was considered to be deserving of the award. Rudd was aboard HMS Vindictive which was tasked with landing shore parties on the breakwater at Zeebrugge known as the Mole. The Mole had been transformed into a seaward outpost of the German coastal defence system and, for all intents and purposes, was a minor fortress. Vindictive came under heavy enemy fire as the approached the Mole suffering heavy casualties including most of the officers in charge of her landing parties. The five Australians aboard, including Rudd, ferried part of the landing parties and, once ashore, found that Vindictive had overshot her assigned position and that the original objective of rushing the Mole head battery was impossible. The objective then changed to one of holding ground as a diversionary measure while under intense enemy fire. With the other ships involved in the raid achieving their respective objectives, the recall was sounded and Vindictive made good her escape. A total of eleven RAN sailors participated in the raid. None were injured. Although not awarded the VC, Rudd was awarded the DSM for his part in the raid. Rudd was subsequently involved in a mutiny onboard HMAS Australia and was stripped of his award.

Robert Ian Davies - Davies joined HMS Repulse as a Midshipman on 8 March 1941. In October 1941 the British government decided to deploy a battle fleet, Force Z, to Singapore with the aim of deterring Japan from entering the war on the side of the Axis powers. However, on 8 December the Japanese landed troops in Malaya and Thailand. That afternoon Prince of Wales, Repulse and four destroyers sailed from Singapore to intercept the enemy. At dawn on 10 December they approached the Malayan coast at Kuantan to investigate a report of a landing. The information proved to be false and they turned east, steaming towards the Anambas Islands. Shortly after 1100 high-level bombers attacked, causing minor damage to Repulse. Twenty minutes later a formation of torpedo-bombers appeared. Struck five times by torpedoes, Repulse rolled over and sank at 1233. Davies' shipmates last saw him firing an Oerlikon gun at enemy aircraft when he and the gun mounting were slowly submerging. He was posthumously Mentioned in Despatches.

Francis Basset ‘Richard’ Emms - Emms was a Leading Cook aboard HMAS Kara Kara during the Japanese air raids on Darwin on 19 February 1942. Despite suffering a severe stomach wound Emms manned a machine gun. At the conclusion of the raid, Emms collapsed and it was only then that extent of his injuries was realised. He was transported to the hospital ship Manunda but died en route. The Commanding Officer of the Boom Defence Squadron noted that Emms ‘probably [saved] the ship and many of the ship’s company’. Emms received a posthumous Mention in Despatches. Emms’ actions have been favourably
compared with those of a Royal Navy sailor, Leading Seaman Jack Mantle, who received a posthumous VC after defending his ship against air attack in 1940.

Robert William Rankin - Lieutenant Commander Rankin was the commanding officer of the sloop HMAS Yarra. On 4 March 1942 Yarra was making her way to Australia with a small convoy escaping the Japanese advance. At 0630, the lookout in Yarra sighted the topmasts of three Japanese heavy cruisers to the north north east. Immediately Rankin made an enemy report, ordered the ships of the convoy to scatter and, placing his ship between them and the enemy, laid smoke while preparing to engage the Japanese. Armed with just three 4-inch guns and faced by ships armed with 8-inch weapons, Yarra’s situation was hopeless. Rankin nevertheless continued fighting until the end in a desperate attempt to save his convoy. Soon after 0800 Rankin ordered ‘Abandon Ship’ minutes before he was killed when a Japanese salvo hit the bridge. Rankin’s actions were in every way comparable with those of Commander Fegan of HMS Jervis Bay, for which Fegan received a posthumous VC. Rankin did not receive an award.

Ronald Taylor – Leading Seaman Taylor was a member of HMAS Yarra’s crew. He ignored the order to abandon ship and remained alone at his gun, firing continually until he was killed shortly before Yarra sank. It is noteworthy that Yarra had earlier rescued 1804 people, on 5 February 1942, from the troopship Empress of Asia which had been crippled by an air attack near Singapore. His commanding officer singled out Taylor, saying that ‘the captain of No. 2 gun deserves commendation in that, on this occasion, as on many others, he controlled his gun with judgment and determination. This rating’s keenness and courage are a good example to all those in his vicinity’. Taylor did not receive an award.

Francis E Smith - Lieutenant Commander Smith was Yarra’s First Lieutenant and was also lost in her sinking. His actions as Officer of Quarters of No. 3 gun had received high praise during previous actions, but he did not receive an award.

Hector Macdonald Laws ‘Hec’ Waller – Captain Waller was the commanding officer of the cruiser HMAS Perth. Following the disastrous Battle of the Java Sea on 27 - 28 February 1942, in which five Allied ships were lost, Perth and USS Houston attempted to escape to Australia. In the late evening of 29 February the two cruisers unexpectedly ran across a powerful Japanese invasion fleet in the Sunda Strait and, despite the odds, set about doing the maximum possible damage. Waller fought hard until, with his ammunition gone and Perth stopped by a torpedo, he gave the order to prepare to abandon ship. A few moments later another torpedo struck just ahead of the first hit, and Waller gave the order to abandon ship. After five or ten minutes a third torpedo struck well aft on the starboard side. This was followed shortly afterwards by a fourth torpedo, which hit on the port side; the ship then righted herself, heeled over to port and sank about 0225 on 1 March 1942. Captain Waller did not survive, but received a posthumous Mention in Despatches.

Edward ‘Teddy’ Sheean - Ordinary Seaman Sheean was an Oerlikon anti-aircraft gun-loader in the corvette, HMAS Armidale. Shortly before 1400 on 1 December 1942 Armidale was attacked in the Timor Sea by no less than thirteen Japanese aircraft. Despite frantic maneuvering the corvette was repeatedly hit. As the vessel listed heavily to port, the order was given to abandon ship. The survivors leapt into the sea and were machine-gunned by the Japanese aircraft. Once he had helped to free a life-raft, Sheean scrambled back to his gun on the sinking ship. Although wounded in the chest and back, the 15-year-old sailor shot down one bomber and kept other aircraft away from his comrades in the water. He was seen still firing his gun as Armidale slipped below the waves. Sheean received a posthumous Mention in Despatches.
David John Hamer - Lieutenant (later Senator) Hamer was the gunnery officer aboard HMAS Australia during her operations in the Lingayen Gulf in January 1945. Here she was subjected to repeated suicide attacks, being hit four times, losing 3 officers and 41 ratings killed and 1 officer and 68 ratings wounded. Hamer was awarded the DSC for his part in the action, his citation reading:

For outstanding efficiency, coolness and courage during the whole period of the operation. His handling of the AA lookouts and constant instructions to the AA gun positions through the Action Broadcast System over a period of 7 to 9 days was exemplary. His orders and instructions were given calmly and clearly and did a great deal to give confidence to the AA guns' crews. His team of lookouts were well-trained and made many visual sightings of enemy aircraft when radar had missed them. On one occasion when it appeared certain that a suicide plane would hit the Air Defence Position, he maintained his place and carried on directing the ship's AA fire calmly and without flinching. The wing of the plane passed within some 15 ft of his head.

Commodore Farncomb offered his endorsement writing: 'I personally observed this officer throughout the operation and entirely subscribe to the above. His conduct was outstanding in every way'. There is some suggestion that Hamer was originally considered for the award of a VC.

Noel Ervin Shipp - Leading Air Crewman Noel Ervin Shipp was born in Queensland, Australia on 24 December 1944. He was educated at Julia Creek, North Queensland and joined the Royal Australian Navy on 10 January 1963 as an Underwater Control rating. Shipp transferred to the Air Crewman category in July 1967 and the following year was posted to the Royal Australian Navy Helicopter Flight Vietnam (RANHFV). The RANHFV was integrated with the United States Army 135th Assault Helicopter Company, flying Iroquois helicopters in both the utility and gunship configurations. Shipp soon found himself flying as a helicopter door-gunner with the 'Taipans', the 135th's gunship platoon. In this role he flew numerous missions providing suppression fire for troop lift helicopters and he also participated in frequent ground assaults on enemy positions and troop concentrations. On 31 May 1969, aircraft of the 135th were extracting elements of the 7th ARVN Infantry Division from a pickup zone in Dinh Tuong Province when they came under intense fire from automatic weapons. Three aircraft were damaged and one pilot was injured necessitating his immediate medical evacuation. The aircraft in which Shipp was flying immediately proceeded to the pickup zone and began making rocket runs on the enemy position. With complete disregard for his own safety, air crewman Shipp hung half outside his aircraft, exposing himself to rocket back blast and intense enemy automatic weapons fire in order to bring more effective fire to bear on the target. At this point of the action Shipp's pilot was hit and the gunship rapidly lost altitude before crashing and exploding in the jungle below. All four crew members perished. During the entire run, up until the moment of impact, air crewman Shipp was observed to be delivering devastating fire into the enemy positions. Shipp did not receive an award.

John Simpson Kirkpatrick - Private John Simpson Kirkpatrick (Simpson) was born in Shields, County Durham, England on 6 July 1892. After attending the Barnes and Mortimer Roads schools he became a milkboy for four years and at 17, after a brief association with the local Territory Army, joined the merchant navy. After deserting to New South Wales in May 1910, on 25 August 1914 as John Simpson he joined the Australian Imperial Force at Blackboy Hill Camp, Perth, believing like many others that he would be going directly home.
to England. Allotted to the 3rd Field Ambulance, Australian Army Medical Corps, he embarked from Fremantle on 2 November for Egypt. Private Simpson landed on Gallipoli with the covering force at dawn on 25 April 1915 and quickly befriended a donkey (called variously Abdul or Murphy but usually Duffy) to carry leg wound casualties to the dressing station. Day and night he worked cheerfully and unconcernedly amid fierce shrapnel and rifle-fire carrying the wounded from the head of Monash valley down Shrapnel gully to the beach. So valued was his work that he was allowed to operate separately, camping with his donkey at the Indian mulecamp. He was known to his fellow diggers as Murphy, Scotty, Simms or simply the bloke with the donk. His name immediately became a byword for courage: the Indian troops called him Babadur - bravest of the brave. His inspirational work and good fortune, however, were to be short lived. On 19 May he was shot through the heart in Monash valley and buried on the beach at Hell Spit. He was mentioned in orders of the day and in dispatches and though recommended by his Commanding Officer for award of the Victoria Cross, the recommendation was not supported by COL Howse, VC who was the Assistant Director Medical Services at the time (Australia's first VC winner).

Albert Neil Cleary – Gunner Albert Neil Cleary (known as Neil) was 25 years old when he died on 20 March 1945. For two years Neil Cleary had been one of more than 2500 British and Australian prisoners of war (POW) building an aerodrome for the Japanese at Sendakha in Borneo. Neil Cleary survived the first march from Sandakan to Ranau and in March 1945, he and a mate, Gunner Wally Crease, escaped from the camp at Ranau. Cleary was recaptured and brought back to the camp where he was thrown into an empty area known as the 'Guard House'. Already showing signs of beatings, his arms were tied high up behind his back and he was made to kneel with a log tied behind his knees. Two Japanese guards kicked and punched him all over his body, including his neck. They caused further pain by jumping on the end of the log tied behind his knees. Every half-hour he was made to stand up. During the next three and a half-hours Cleary was beaten with rifle butts, sticks and anything else to hand. The beatings continued the next day and when Crease, the other escapee, was recaptured and returned to camp both men were given the same treatment all that afternoon. The bashings continued throughout the night. Wally Crease managed to escape again the next morning but Japanese guards found him and shot him. Cleary was still alive four days later by which time he had been tied to a tree by his neck and was dressed only in a 'hindoshi', a small piece of cloth given to the POWs to cover their private parts. Cleary was then suffering from dysentery and had been left to die in his own excrement. His captors continued to hit him with fists and rifles. He remained in this condition for 11 or 12 days until the guards could see he was dying. Finally his friends were allowed to lift him up, wash him and take him away to die. Gunner Cleary did not receive an award at the time however has been recommended for a posthumous Commendation for Gallantry in accordance with the Defence Honours and Awards Appeals Tribunal Inquiry into Recognition for Far East Prisoners of War Who Were Killed While Escaping.
Inquiry into unresolved recognition for past acts of naval and military valour

Terms of Reference

The Defence Honours and Awards Appeals Tribunal (the Tribunal) shall inquire into and report on any acts of valour of Australian military personnel from the year of Federation to the present.

In conducting its inquiry the Tribunal shall:

(a) make findings and recommendations on the eligibility of naval and military members to receive the Victoria Cross, the Victoria Cross for Australia or other forms of recognition for their service,

(b) consider any other material relevant to these claims, including, but not limited to, any previous reviews conducted with regard to recognition for this service.

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

The Tribunal may interview such persons as it considers appropriate and consider material provided to it that is relevant to these terms of reference.

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

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

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

Submissions to the Tribunal close on 30 November 2011.
POLICY REGARDING THE AWARD OF THE VICTORIA CROSS

1. The current evidentiary requirements for the Victoria Cross and the procedures for awarding it.

The requirements for the Victoria Cross are exceptionally stringent. All awards of the Victoria Cross are approved by Her Majesty The Queen. The Queen would decide an award on the basis that the recommendation was made by those who had seen or who had direct report from those who had seen the action. As such, any recommendation would have to be accompanied by conclusive proof in so far as the circumstances allowed and attestation of any facts. Three independent witness statements are considered the minimum necessary to support a Victoria Cross recommendation.

The procedure for awarding the Victoria Cross is as follows:

- Recommendation initiated by Commanding Officer in the field, supported by three eyewitness accounts of the action, made and reported through the appropriate chain of command within the Australian Defence Force.
- Recommendation by the Minister for Defence to the Prime Minister.
- Informal approach to Her Majesty The Queen to determine whether The Queen would look favourably on the recommendation.
- Formal recommendation from the Prime Minister to The Queen, under cover of a letter from the Governor-General.
- The Queen either approves or rejects the recommendation.

2. The current legal status of the Australian VC vis-a-vis the British VC.

The Victoria Cross for Australia and Imperial (British) Victoria Cross are equivalent awards in the Australian honours and awards system. Awards of the Victoria Cross were established through the exercise of the Royal Prerogative. As such neither award (nor any honour or award within the Imperial or Australian honours and awards systems) is created by a legislature, nor governed by law. Therefore, any concept of their having legal status would be incorrect.

3. The legal ability of Australia to issue posthumous Australian VCs for actions which took place before the Australian VC was established (ie, for World War I and II).

There is nothing in the Regulations governing the Victoria Cross for Australia that would prevent it being awarded for actions that occurred prior to award being established in 1991. However, in 1952, the Sovereign decreed there would be no further review of actions or new awards for actions during or arising out of World War II. The Queen reaffirmed the position in 1963 that no more awards for gallantry and meritorious service would be granted in respect of World War II service. This view has been reaffirmed on more than one occasion now and, the decree has remained in force ever since.

Nonetheless, there is nothing to prevent the Independent Defence Honours and Awards Tribunal from reviewing issues relating to the award or non-awarding of the Victoria Cross. However, any final outcome would be dependent on restrictions that might be imposed by the Sovereign’s decree and the prerogative of Her Majesty The Queen now if any recommendations for retrospective awards were put to Her.
4. Whether the evidentiary standards for the Australian VC or the procedure for awarding it can be changed by the Australian Parliament without reference to the UK government.

The Victoria Cross for Australia was established by Her Majesty The Queen exercising the Royal Prerogative, on the advice of Her Australian Prime Minister. The United Kingdom Government has no role in the procedure for awarding any Australian honour or award. The Australian Parliament also has no role in determining what evidentiary standards would be acceptable. The evidentiary standards in place are based on 150 years of practice across all countries that have had access to the Victoria Cross so any approaches to change this would need to include the extension of necessary courtesies to The Queen. This ensures that awards in the Australian honours and awards system are not subject to interference or that selected persons receive preferential treatment.

5. Support or otherwise for any change in the evidentiary standards for the posthumous awarding of the VC within the ADF and ex-service organisations.

The level of support for any change to the evidentiary standards for posthumous award of a Victoria Cross cannot be gauged but as there is support for retrospective awards of the Victoria Cross to be made, these lobbyists would no doubt like to see the evidentiary standards changed if necessary to allow the awards to be made. However, there is also resistance to this and for example, this was expressed by the Returned and Services League of Australia (Australia’s peak ex-Service organisation) in 2001 that any proposal to make retrospective awards of the Victoria Cross should be abandoned and for the issue to be kept out of political debate.

The then National President, Major General Peter Phillips, indicated that the RSL had consistently opposed revisiting decisions on individual honours and awards and that decisions made more than 50 years and even 85 years ago cannot be fairly judged now. The RSL stated that any change would create an unhealthy precedent.

6. The Department’s view (if any) of the allegation that in the past the RAN was discriminated against in the awarding of VCs.

Awards of the Victoria Cross were made by those best placed to make those recommendations having taken into account the totality of the circumstances surrounding the incident and in accordance with the procedures in place at the time. In the absence of the views of commanders of the time, Defence is not in a position now to speculate about past nominations and therefore cannot necessarily support a view that the Royal Australian Navy has been discriminated against.

7. The circumstances of the cases of Ordinary Seaman Teddy Sheean, Captain Hec Waller, Lieutenant-Commander Robert Rankin and Lieutenant-Commander Henry Stoker.

Ordinary Seaman E Sheean H1617 died when HMAS Armidale was sunk by Japanese forces in November 1942. He was posthumously awarded a Mention in Despatches for this action.

Captain H M I Waller DSO RAN was in command of the Australian cruiser HMAS Perth when it was attacked by the Japanese in the Sunda Strait on 1 March 1942. After fighting until all of the ship’s ammunition had been expended, Captain Waller remained on board as HMAS Perth sank with the loss of 353 lives. He was posthumously awarded a Mention in Despatches for this action.
Lieutenant-Commander R W Rankin RAN was in command of the Australian sloop HMAS Yarra when it was sunk during an engagement with Japanese forces in the Indian Ocean on 4 March 1942. Lieutenant-Commander Rankin died along with the majority of the ship’s company. He did not receive any recognition for this action.

Lieutenant-Commander H H G D Stoker DSO RN was an officer of the Royal Navy who successfully penetrated the Dardanelles when in command of the Australian submarine AE2 during the Gallipoli campaign in April 1915. Lieutenant-Commander Stoker was interned as a prisoner of war in Turkey along with the remainder of the ship’s company of AE2. He was awarded a Distinguished Service Order and a Mention in Despatches in recognition of his service in AE2.

None of the above members were nominated for an award of the Victoria Cross.

8. The current status of documentation held by the Department regarding these cases.

Historical documentation in relation to these cases would now be archived either in the National Archives of Australia, the Australian War Memorial of both and these documents, being in the ‘open access’ period under the Archives Act 1983 (ie, over 30 years old), should be open to the public for access. However, as Lieutenant Commander Stoker was a Royal Navy officer, it is expected that Australia would hold very little documentation concerning his service (if any), and it is likely that inquiries would need to be made in the United Kingdom. The Defence will access all available documents in the preparation of submissions to be put to the Tribunal.

9. The level of support in the ex-service community and in the ADF (particularly the RAN) for the awarding of the VC to these four men.

The RAN has received intermittent correspondence concerning retrospective awards of the Victoria Cross to members of the RAN. The HMAS Yarra Association has been particularly vocal concerning a retrospective award for Leading Seaman Ronald Taylor 20663 who, like Ordinary Seaman Shean, remained at his gun until HMAS Yarra sank. Others have pushed for other lesser known but equally brave individuals to receive awards.

Since the Chief of the Defence Force (CDF) announced at the recent Additional Estimates hearing on 19 October 2010 that he would review the situation, there has been increasing anecdotal support within the Navy and ex-service community.

This has also re-energised lobbying for award of the Victoria Cross to John Simpson Kirkpatrick (Simpson) and it is likely to re-open claims for award of the Victoria Cross for other campaigns such as Vietnam.

The Directorate of Honours and Awards (DH&A) has not received any enquiries by current serving personnel.

10. The changes (if any) that would be necessary to current legislation to allow a formal process of investigation of these four cases to be undertaken and VCs awarded if a suitable evidentiary standard can be met.

The Victoria Cross is not covered by legislation however the level of evidentiary standards for its award have remained the same for the last 150 years. An investigation can occur at any
time and, during a Additional Estimates hearing on 19 October 2010, the CDF undertook to refer this matter to the independent Defence Honours and Awards Tribunal for review.

However, because awards of the Victoria Cross are the prerogative of The Queen, any final outcome would also be dependent on Her view of the evidence presented to Her for consideration.