THE RAAC CORPORATION LIMITED
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Senator the Honourable Linda Reynolds CSC
Minister for Defence
Parliament House
CANBERRA ACT 2600

The Honourable Mr Darren Chester MHR
Minister for Defence Personnel & Veterans' Affairs
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CANBERRA ACT 2600

SUBJECT
POSTHUMOUS AWARD OF THE VICTORIA CROSS TO EDWARD SHEEAN RAN

PURPOSE

To put before you issues related to the decision of the Commonwealth as represented by the Prime Minister and yourself as Minister for Defence, to not support the recommendation of the Defence Honours and Awards Tribunal (the Tribunal) to award Ordinary Seaman (OS) Edward Sheean a posthumous Victoria Cross (VC) for his conspicuous gallantry and self-sacrificing actions on 1st December 1942, during which he deliberately sacrificed his own life to save his shipmates on HMAS *Armidale*.

This submission argues that the decision by the Prime Minister to refuse to support the Tribunal's recommendations is both unfortunate and incorrect in that a gap between the 2013 Valour Inquiry in which he has relied on incomplete evidence which was adduced during the 2019 Review and which constitutes new and compelling evidence. This submission also relies on common law decisions (relevant persuasive authority) to further reinforce the contention the Tribunal in *Barnett* (2019) acted properly and reasonably at all material times in conducting its hearing and in recommending the posthumous award of the VC to Edward Sheean.

This submission further contends the Commonwealth has not acted as an honest broker and has failed the Test of Reasonableness in making this decision.

BACKGROUND

On 23 July 2019,the Tribunal in *Barnett and the Commonwealth* [2019][1] handed down its decision in this matter, recommending that:

> *a) The decision by the Chief of Navy to refuse to recommend the award of the Victoria Cross for Australia to Ordinary Seaman Edward Sheean in respect of his actions in HMAS Armidale during a Japanese aerial attack in the Timor Sea on 1 December 1942 be* ***set aside****.*
>
> *b) The Minister* ***recommend*** *to the Sovereign that Ordinary Seaman Edward Sheean be posthumously awarded the Victoria Cross for Australia for the most conspicuous gallantry and a pre-eminent act of valour in the presence of the enemy in HMAS Armidale during a Japanese aerial attack in the Timor Sea on 1 December 1942.*[2]

These recommendations have not been supported by the Commonwealth, causing considerable anguish within the Sheean family and also the wider ex-service community[3], in particular amongst RAN veterans.

ISSUES

As an interested party[4], the Royal Australian Armoured Corps Corporation (the RAAC Corporation), addresses six issues in this submission, which ought to have been properly and relevantly before the Commonwealth in order for the Commonwealth to make an informed decision based on all the material facts.
They are:

1. **The Passage of Time**
2. **The Valour Inquiry vs Barnett – New and Compelling Evidence – a Fatal Error**
3. **Two Classes of Award**
4. **A Consciousness of Impending Death**
5. **The Correctness of the Tribunal's Decision in *Barnett***
6. **The Reasonableness or Otherwise of the Commonwealth's Decision**

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[1] *Barnett and the Department of Defence re: Sheean* [2019] DHAAT 09 (23 July 2019), 32pp.
[2] Above, n1, at p.1.
[3] Denholm, M., 2020, "Mutiny over snub to dead navy hero." *The Australian,* 1 June, p.3.
[4] Edward Sheean's nephew **WO2 Grant Sheean RAAC (Ret'd)** has been known to this writer since early 1968 through Army service in the same Corps and units and both have maintained a deep and lasting friendship including service in Vietnam during this writer's second tour of duty since that time including both families. Mr Sheean is a recipient of the **Federation Star** in recognition of 40 years Army service, retiring after serving for 42 years. Similarly, former **RSM-A Mr Peter Rosemond CSC OAM RAAC (Ret'd)** has been known to Mr Sheean since 1974 through various postings and has, along with his family, also developed a deep and lasting friendship with Mr Sheean. This writer and Mr Rosemond have a well-developed appreciation of the Sheean family's attempts over the years, to seek justice for Edward Sheean. As an Armoured Corps veteran, Mr Sheean has standing for the RAAC Corporation to make representations on his behalf. Hence, the RAAC Corporation is an interested party.

1. The Passage of Time

In electing to refuse to intervene, the Prime Minister noted the extremely long lapse in time between the action in 1942 and the Tribunal's 2019 decision. This cannot pass without comment.

The Australian Honours and Awards system operates according to the Doctrine of Procedural Fairness as opposed to the NZ system which has no mechanism for the conferring of retrospective awards.

It is contended that in making a decision to not support this matter, the Prime Minister has failed to have regard to a previous Tribunal finding (relevant persuasive authority) and as such, has fallen into serious error.

In that regard the RAAC Corporation relies on the decision of the Defence Honours and Awards Tribunal in the matter of HMAS *Yarra,* which held that:

> *21-95* ***Given all of the prevailing circumstances****, the Tribunal considered that the* ***injustice that occurred in the case of Yarra could only be corrected 70 years later*** *by awarding an Australian Unit Citation for Gallantry.*
>
> *21-96 In considering this recommendation, the Tribunal looked at not only the regulations establishing unit Citations but also the current Defence policy, as set out in Chapter 9 of the Defence honours and awards manual.*
>
> *21-97 Clause 9.13 of this policy states that nominations for unit Citations are to be submitted and considered no later than three years after the end of the conflict. This part of the manual, along with a number of others, does not take into account the 2011 amendments to the Defence Act 1903 (the Act), which established the Tribunal. Under the Inquiry provisions of the Act, the Tribunal is able to make recommendations about* ***any form of medallic recognition*** *for Australians in any military action,* ***regardless of the passage of time*** [at 315][5] (This writer's bold emphasis added).

Notwithstanding the incorrect clause cited – the correct clause cited in 21-9 above is **9.15**, the decision of the Tribunal is significant in that it is not bound by technicalities and in so doing, is acting according to substantial justice and the merits of the case. This is precisely what the Barnett Tribunal did in the Sheean matter, consistent with merits review practice and procedure.

[5] Defence Honours and Awards Tribunal 2013, ***The report of the inquiry into unresolved recognition for past acts of naval and military gallantry and valour***, (The Valour Inquiry) 468 pp, see especially pp 297-316, online https://defence-honours-tribunal.gov.au/wp-content/uploads/2019/11/Valour-Inquiry-Report.pdf [accessed 1/6/2020].

Although it is acknowledged that the Tribunal addressed its statutory and common-law jurisdiction in some detail, including the comprehensive 468-page Inquiry into Unresolved Recognition of Past Naval and Military Gallantry (2013) (the Valour Inquiry), the Tribunal took the view that the Chief of Navy's letter was to be treated as a Deemed Refusal, constituting grounds to conduct a *de novo* review of the Sheean matter.

The RAAC Corporation contends that the precedent set by the Valour Tribunal in *Yarra* (*supra*) is binding and should be followed by the Commonwealth in reviewing *de novo,* its decision to not intervene and support the Tribunal's recommendations that OS Sheean be awarded a posthumous VC.

What is significant is that the Tribunal stood *de novo* in the shoes of Defence in assessing all the evidence before it, including the fact that no representations were made by Senior RAN officers at the time of Sheean's death as had been the case in Britain in respect of two Royal Navy (RN) members (Mantle VC and Sephton VC – both posthumous)[6] whose deaths in action were strikingly similar to that of Sheean.

Similarly, the Valour Inquiry reported that:

> *It has been suggested that the ACNB was compromised in its handling of the loss of Armidale by its desire to protect both Commodore Pope and its own reputation, and, if this was the case, there was a deficiency in the process of handling Sheean's recommendation.*[7]

This is significant. It is not an exaggeration to advance the not unreasonable proposition that such a comment gives rise to the reasonable inference that other influences operated to deny Sheean the entitlement to the posthumous award of the VC. Consequently, it is contended that such a commentary by the Valour Inquiry would have operated to create a reasonable doubt as to the integrity of the awards recommendation process implemented after *Armidale's* sinking and Sheean's death.

In addition, it is contended that in *Yarra* (*supra*) the then Tribunal also stood (*de novo*) in the shoes of the original Primary decision makers in WW2 and also in the shoes of the Chief of Navy, Vice Admiral Noonan. The Valour Inquiry exercised its independence in recommending the award of medallic entitlement recognition for deeds and actions that had occurred many decades before.

In *Barnett* (2019), the Tribunal again asserted its independence notwithstanding its decision is silent on the *Yarra* precedent to conduct a review of the Sheean matter based on the Chief of Navy's view that *"there was no new evidence that supported reconsideration or review of Sheean's actions."*

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[6] Above, n5, at Ch 17,pargraphs 17-99 to 17-101.
[7] Above, n5, at Ch 17, paragraphs 17-104.

In both cases it is contended the Tribunals acted differently in their approach to this matter with the Valour Inquiry missing important direct similar-fact evidence, which prejudiced and compromised their findings, whereas the Tribunal in Barnett adduced and accepted that evidence. This changed the landscape in terms of a positive recommendation for the award being made.

The material facts are indisputable and incontrovertible in the Sheean matter.
The conspicuous gallantry displayed by him is manifestly significant on every level and is worthy of medallic recognition by way of a posthumous VC.

2. Valour Inquiry vs Barnett – New and Compelling Evidence, a Fatal Error

The Prime Minister's comment that that there is *"no compelling new evidence";* require comment. In a statement[8], the Prime Minster said *inter alia*:

> *"No compelling new evidence has been presented by the Tribunal that supports a reconsideration of the decisions by the authorities at the time to recognise the gallant actions of Ordinary Seaman Sheean on the HMAS Armidale with the award of Mention in Despatches in 1942.*
>
> *"No case has been made that Ordinary Seaman Sheean was denied a VC because of manifest injustice.*

There are two limbs to this issue which require comment, namely the Valour Inquiry (2013) and evidence adduced in *Barnett* (2019) hearing.

The Valour Inquiry addressed the Sheean matter in Chapter 17 (pp.198-231 at paragraphs 17-01 to 17-145). On examination it is noted that the Chapter is completely silent on a material particular, one which was introduced in evidence at the 2019 review.

The Valour Inquiry did not at any stage in its inquiry refer to the deliberate and conscious decision by Sheean to turn back from the lifeboat and man the gun on a sinking ship.

Nowhere in Chapter 17 is this addressed. This created a lacuna in the chain of evidence constituting a manifest defect in the process of examining all matters relevant to the determination of Sheean's eligibility for a posthumous VC.

It follows that, the Valour Inquiry fell into serious error in not admitting Sheean's deliberate actions in turning back to the gun into evidence and as such, was fatal to any attempt to have the matter resolved in the favour of OS Sheean and his family. The preceding analysis demonstrates a failure by the Valour Inquiry to ensure all material particulars were before it. In particular, the RAN did not refer to this issue either during the Valour Inquiry.

[8] https://www.abc.net.au/news/2020-05-13/world-war-ii-hero-teddy-sheean-denied-victoria-cross/12244456 [accessed 1/6/20].

In exercising its discretion to conduct a review, the Tribunal in *Barnett* took a clear and deliberate step to ensure all relevant evidence was adduced. The inquisitorial nature of the Tribunal's proceedings underpins its duty to act according to substantial justice and uncover the truth in order to inform itself and make necessary recommendations.
In so doing, it also had regard to the Valour Inquiry report.

Similarly, evidence which was properly and relevantly available to the Valour Inquiry, namely Sheean's decision to remain on board was entered into evidence and can be found at paragraphs 23, 27-28, 32-34 and 72 inclusive. That evidence is of an order of such importance that it should be treated as new and compelling evidence in the context of the recent hearing. Its newness flows from the fact it was available to the Valour Inquiry but was not tabled. Given that it was later adduced in *Barnett*, it should at every level be classed as new and compelling evidence. There is no other conclusion that can be reached.

In that regard, it can be reasonably postulated that the Commonwealth has hidden behind what is now considered to be a fatally flawed report, namely the 2013 Valour Inquiry Report. In so doing, it shut its ears to further advocacy on this matter. The fact the Commonwealth did not at any stage have regard to the compelling and new evidence in *Barnett* is strongly suggestive of a Government shutting its ears to the clear and blindingly obvious.

It follows that, the Commonwealth's position as espoused by the Prime Minister on new and compelling evidence is considered to be otiose.

The impossibility of adducing new and compelling evidence is not a relevant consideration given all members of the crew with one exception, are deceased. Their evidence has not wavered since the sinking. The evidence as adduced by witnesses and cited in *Barnett* (2019) is utterly compelling. To assert the unavailability of any such of new and compelling evidence given the passage of time, the complete lack of the availability of other witnesses and what has previously been tendered, is a complete folly and defies all reasonable logic and comprehension.

The Tribunal's comments in *Yarra* regarding the injustice being corrected after 70 years and the Tribunal's 2019 decision to recommend the award, operates to cure an injustice that should not have occurred and to cure a defect in the medallic recognition process.

The *Yarra* decision reinforces the view that a claim or application for medallic recognition shall not be defeated due to the efflux of time or the effects of time on memory or the absence of documents. The *Yarra* decision operates to the benefit of the Tribunal in *Barnett* and must be taken into consideration by the Prime Minister.

The Tribunal's decision and findings of fact are on every level, completely and directly relevant to the matter of the denial of recognition and honour to OS Sheean and his family by the Commonwealth. It clearly advances the not unreasonable proposition that the Commonwealth has abrogated its duty to act as an honest broker.

3. Two Classes of Award

In an interview with Alan Jones on 2GB on Friday 29 May 2020, the Prime Minister contended that awarding a posthumous VC to Edward Sheean would crate two classes of award.
That view is completely fallacious and is not supported on any view. It should not be allowed to stand.

The Australian Honours and Awards system is hierarchical and not class-based as in the UK. There are no classes of VC and nor should the VC be rank or class-based. Recipients of the VC fit into one of two categories. These are:

- Veterans who have been so honoured and have survived the action; and
- Veterans who were killed in action and so honoured, posthumously.

4. A Consciousness of Impending Death

The evidence adduced in *Barnett* (supra) is to the effect *Armidal*e was sinking rapidly and on the order to abandon ship, OS Sheean was seen to move towards a lifeboat with his shipmates. He was then seen to turn and go back to his this weapon station and physically strap himself into the gun and engage the enemy.

In so doing, it is not an exaggeration to contend that OS Sheean had developed a consciousness of impending death in taking the course of action he did; viz

- Turning away from the lifeboat and making a conscious decision to return to his station;
- Physically strapping himself into the Oerlikon;
- Engaging the enemy knowing the ship was sinking fast (the Captain had given the abandon ship order when *Armidale* had reached 50 degrees angle of heel).

This consciousness of impending death was also acknowledged by the Tribunal in its comments at paragraph 136 (at p.30).

These facets of Sheean's actions are consistent with the view that in order for a VC to be awarded, the conspicuous gallantry must be of an order of gallantry and severity that it would have a very high probability of death for the person performing the act or acts of conspicuous gallantry.

This was discussed by the Tribunal in considerable detail in paragraphs 114 to 145.

Further, the RAAC Corporation relies on the decision of the Tribunal in *Hanuszewicz (OBO Cameron)* (2019)[9] in which the Tribunal followed the 1960 VC policy in force at the relevant time; viz

[9] *Hanuszewicz and the Department of Defence re: Cameron* [2019] DHAAT 08 (23 May 2019).

> *74. Guidance for the award of the VC was contained in the 1960 Pamphlet which stated that it could be awarded: For most conspicuous gallantry of the highest order in the presence of the enemy. (A guide as to the standard required may be taken as* ***a 90% possibility of being killed in performing the deed)***[10]. (This writer's bold emphasis added).

In further addressing the matter in *Hanuszewicz* (*supra*), the Tribunal noted:

> *The conditions for the award for the VC require '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'.*[11]
> (This writer's bold emphasis added).

Interestingly the Letters Patent for the award of the VC of Australia 15/1/1991, mirror at Regulation 3 the same conditions set out in the 1960 pamphlet cited previously, for the award including self-sacrifice; viz

> ***Conditions for award of the decoration***
> *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.*

In *Barnett*, Sheean's deliberate action in going back to man the gun was acknowledged by the Tribunal'; viz

> *The evidence therefore indicates that he left his action station, made his way to the motor-boat, and then made a conscious decision to return to his action station.*[12]

In applying the 90% criterion expressed in *Hanuszewicz*, it is quite plain to see that OS Sheean's deliberate actions and self-sacrifice exceeded that criterion. There can be no better demonstration of an individual meeting that very high bar. In examining the decision by Sheean to remain with the gun to save his mates, the Tribunal stated:

> *105.* ***The risk to Sheean personally was also extreme.*** *In electing not to board the motor-boat as the ship was sinking,* ***he could have had little prospect of survival****. Admiral Noonan's evidence, which the Tribunal accepts, was that on the order to 'abandon ship', it is the expectation that the ship's company will obey that order immediately.* ***The Tribunal considered that Sheean's action in returning to the Oerlikon gun was selfless and taken in the interests of his shipmates and that his decision to return to the gun demonstrated a special and additional element of courage, beyond what was expected of him***.[13] (This writer's bold emphasis).

These comments by the Tribunal underline most convincingly the level of extreme courage and fortitude demonstrated by Sheean which on any reading clearly complies with, if not exceeds, the regulatory criteria for the award of a posthumous VC.

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[10] Above, n9, paragraph 74 at p.20.
[11] *Pamphlet on Military Honours and Awards 1960, WO12922 dated July 1960*, above, n.8, paragraph 108, at p.28.
[12] Above, n1, paragraph 43a at p.12.
[13] Above, n1, paragraph 105 at p.24.

In view of the facts as enunciated, OS Sheean's deliberate act of incredible gallantry and self-sacrifice to save his shipmates completely rebuts any and all contentions that his actions on 1st December 1942, were not eminently deserving of the posthumous award of the VC.

5. The Correctness of the Tribunal's Decision in *Barnett*

In its deliberations, the Tribunal held that:

> *Accordingly, the Tribunal finds that the ROP, which formed the basis of the consideration of Sheean's medallic recognition following the events of 1 December 1942, understated Sheean's actions.*[14]

The acknowledgment by the Tribunal that Sheean's actions were understated is significant and reinforces the earlier failure by the Valour Inquiry to examine all matters relevant to that Inquiry including most particularly and significantly, direct similar-fact evidence as cited in paragraphs 23, 27-28, 32-34 and 72 in *Barnett.*

That similar-fact evidence and its reliability was acknowledged by the Tribunal; viz

> *The Tribunal concludes that the eye witness accounts are, in this matter generally reliable, and when taken together, provide an accurate description of Sheean's actions on 1 December 1942.*[15]

These findings of fact completely rebut the baseless assertions made by a (non-veteran) medal collector Mr G. Wilson to the Valour Inquiry, as to the preposterous nature (paragraph 17-90 at p. 219) of the witness statements and puts beyond any reasonable doubt the fact Sheean's actions were anything other than complete and utter conspicuous gallantry. The rejection by the Valour Inquiry of Wilson's assertion (paragraph 17-140 at p.230) is noted.

The assertion by Mr Wilson that *"a retrospectively awarded VC would be seen by the medal-collecting community as worthless"* (paragraph 8-28 at p.24), cannot also pass without comment.

The assertion is on every level, reprehensible in that it reduces an award of a VC for an act of uncommon valour and self-sacrifice to nothing but a financial value. To reduce the significance of an award of this nature to a dollar value, demonstrates a complete lack of respect or appreciation for the intrinsic (priceless) and emotional value of such an award to the Sheean family and to the RAN's illustrious history. It is an indefensible assertion that operates to *de minimis* the sacrifice made by OS Sheean and an act of complete disrespect to the Sheean family and veterans, in general.

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[14] Above, n1, paragraph 44 at p.12
[15] Above, n1, paragraph 45 at p.12.

In examining the correctness or otherwise of the Tribunal's decision in *Barnett*, the finding of the Full Court of the Federal Court in *Drake* (1979)[16] is directly relevant, in which the Court held *inter alia*:

> *The question for the determination of the tribunal is not whether the decision on which the decision-maker made was the correct and preferable one on the material before him. The question for the determination of the tribunal is whether that decision was the* ***correct or preferable one on the material before the tribunal.*** (This writer's bold emphasis added).

It is contended that the decision in *Barnett* and findings of fact in that review, based on the whole of the material before it including eyewitness accounts, was the correct and preferable course of action. It cured a serious defect in the process undertaken by the 2013 Valour Inquiry.

6. The Reasonableness or Otherwise of the Commonwealth's Decision

The recent Tribunal decision in *Barnett* and the Commonwealth's negative response, begs the question, was the Commonwealth's position in not supporting the 2019 Tribunal's recommendations, reasonable?

The question to be addressed in examining the decision by the Commonwealth to refuse to support the Tribunal's recommendation is whether the Commonwealth's grounds for refusing to endorse these recommendations, were reasonable. On the evidence thus far, it is contended that the position taken by the Commonwealth was not reasonable. This contention finds support in a number of authorities:

In that regard, I rely on the decision of the Federal Court in the *Australian Doctors* case[17] in which the Court held that the term *"reasonable"* to be construed as defined in the Concise Oxford Dictionary, that is, *"Agreeable to reason, not irrational, absurd or ridiculous".*

Nothing in any subsequent decision by a Court of superior jurisdiction has detracted from that analysis by Her Honour of the Test of Reasonableness.

The decision by the Commonwealth to hide behind the policy veil of no new and compelling evidence is completely lacking in any merit. It does not, based on the overwhelming evidence flow and must not be allowed to stand. The decision is so lacking in merit or integrity, it falls into the category of unreasonableness in that; *"an administrative decision may be quashed if the decision is so unreasonable no reasonable person would have come to it"* (*The Doctors' Case, supra* at 465).

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[16] *Drake v Minister for Immigration and Ethnic Affairs (1979), 2 ALD 60, per Bowen CJ,* Smithers and Deane JJ.

[17] (*Australian Doctors' Fund v Commonwealth* (1994) 34 ALD 459, per Beazely J; *Department of Industrial Relations v Burchill* (1991) 33 FCR 122; 105 ALR 327, considered).

This finding by the Beazely J in the Federal Court, followed the classic statement in relation to the principle of unreasonableness set down in *Wednesbury* (the Wednesbury Principle) in that the Commonwealth has made a decision that based on the strength and probative value of the evidence in *Barnett*, is of such nature that the Commonwealth has "*come to a conclusion so unreasonable that no reasonable authority could ever have come to it".*[18]

Similarly, in *Wednesbury*[19] (*supra*), the Court held that a decision *"is so unreasonable that it might almost be described as being done in bad faith."* The refusal by the Commonwealth in spite of the overwhelming evidence is on every level and on every reading, so unreasonable that the unreasonable of its decision clearly supports the contention the Commonwealth is following the unreasonableness template of the Wednesbury Principles in denying reality.

The application of the test of reasonableness has also been applied in other merits review jurisdictions. In *Georges* [2009][20], the AAT held that:

> *…the Concise Oxford Dictionary defines the word reasonable in terms of sound of judgment, sensible, moderate, not expecting too much, ready to listen to reason, within the limits of reason, not greatly less or more than might be expected, tolerable, fair.* At par [22].

In this instance, it is contended that the decision of the Tribunal in recommending the award of the posthumous VC is based on the material before it is correct and is therefore reasonable in all the circumstance. It meets on every level, the requisite Tests of Reasonableness.

The action by the Commonwealth in refusing to support the Tribunal's recommendations falls on fallow ground and fails manifestly, any Test of Reasonableness. Reasonableness and equity was not applied by the Commonwealth in Edward Sheean's case.

The action taken by the Commonwealth was in all the circumstances, unreasonable action and is inconsistent with settled common law decisions and merits review decisions in respect of procedural fairness.

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[18] *Associated Provincial Picture Houses v Wednesbury Corp* [1948] 1 KB 223 per Greene L, MR. Online at: http://www.bailii.org/ew/cases/EWCA/Civ/1947/1.html [accessed 4/6/2020].

[19] Above, n18.

[20] *Georges and Telstra Corporation Limited* [2009] AATA 731 (24 September 2009), [22] per Campbell, M. See also V*on Stieglitz and Comcare* [2010] AATA 263 (15 April 2010), [67] per Creyke, SM and Miller, M; *Yu and Comcare* [2010] AATA 960 (1 December), [8] per Webb, M. The decisions in *Von Stieglitz* and *Yu* followed the decision of the AAT in *Georges*.

SUMMARY

1. In summary, the Sheean matter is one that must be resolved in favour of Edward Sheean and his family. The fact this battle has continued for such a length of time is due to the persistence of the Sheean family and members of the ex-service community and others to advocate for as long and hard as they have in order to right a terrible wrong.

2. The failure by the Naval Board of Inquiry into the sinking of HMAS *Adelaide* to examine the issue of medallic entitlements, given the savagery and intensity of the action is indefensible and incomprehensible.

3. The injustice of Edward Sheean's treatment by the Commonwealth on this matter is an extension of that initial failure. It is also indefensible.

4. It is a *malé fides* exercise by the Commonwealth which has taken an unhealthily adversarial approach to this matter.

5. Both Tribunals looked at the issue closely, with one Tribunal failing manifestly to have regard to critically important direct similar-fact evidence causing the Commonwealth as represented by the Prime Minister to fall into serious error.

6. The Barnett Tribunal decision was on any reading and on every level, the correct decision.

7. The test of reasonableness was met by the Barnett tribunal at every step of the way.

8. The Commonwealth failed that test manifestly and in so doing, failed to act as an honest broker.

CONCLUSION

In conclusion:

1. The decision to recommend the award of a posthumous VC to Edward Sheean is correct on every level.

2. The evidence put before the Barnett Tribunal clearly establishes a level of gallantry and self-sacrifice by a teenage sailor who was at the time, ineligible due to his age, to vote or drink alcohol in a hotel.

3. His conscious and deliberate decision to forgo an opportunity to take to the lifeboat and subsequently return to and operate the gun to save his mates lives, displays a level of incomparable maturity and an acceptance of impending death in one so young.

4. The evidence of the survivors clearly described the deliberate action OS Sheean took to save his shipmates' lives in the full knowledge he would die doing so.

5. The striking parallels between Sheean's action and that of two RN sailors Mantle and Sephton, make it unambiguously clear that Edward Sheean's uncommon gallantry in circumstances of great peril, should be recognised by a like award.

6. All the evidence supported by relevant persuasive authority clearly and unambiguously makes him eligible for this award.

7. The criteria for the posthumous award of the VC to Edward Sheean has been met by him every step of the way.

8. The decision by the Commonwealth to refuse to support the Tribunal's recommendation in respect of a posthumous VC to be awarded to Edward Sheean, based on a spurious claim of no new and compelling evidence, has not been made out.

9. The case for awarding a posthumous VC to Edward Sheean based on the overwhelming evidence has been made out.

10. It now falls to the Prime Minister and the relevant Minister to redress this terrible injustice.

RECOMMENDATION

That you note the above and make representations to the Prime Minister to set aside his decision to refuse to support the Tribunal's recommendations and agree to the recommendations that:

1. The 2018 decision of Chief of Navy to refuse to recommend the award of a posthumous VC be set aside; and

2. The relevant Minister recommend to her Majesty the Queen that Ordinary Seaman Edward Sheean be posthumously awarded the Victoria Cross for Australia for the most conspicuous gallantry and a pre-eminent act of valour in the presence of the enemy in HMAS Armidale during a Japanese aerial attack in the Timor Sea on 1st December, 1942.

Submitted for your consideration and action.

Noel Mc Laughlin OAM MBA
Chairman
RAAC Corporation
4th June, 2020