

Tabled 29.6.2000

GOVERNMENT RESPONSE

**TO THE RECOMMENDATIONS OF THE JOINT STANDING
COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND
TRADE**

'REPORT ON THE LOSS OF HMAS SYDNEY'

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OF THE JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS,
DEFENCE AND TRADE:
REPORT ON THE LOSS OF HMAS SYDNEY**

Recommendation 1. The Committee recommends that the Australian Government review the operations of the *Archives Act 1983* in regard to World War II material, with a view to providing full public access to all material. (para 3.12)

All Commonwealth records dating between 1939-1945 are in the open access period (ie over thirty years old) as defined by the Archives Act. Any member of the public has the right to apply to see them and be provided with access unless the records, or portions of them, contain material that the Archives Act provides should remain exempt in which case they are entitled to a statement of reasons setting out why exemptions have been applied.

Of the 21.6 shelf metres held by the National Archives that are potentially relevant to those interested in HMAS *Sydney* a proportion has been assessed by the Archives. Of the material assessed, the Archives has released for public access all the records directly relevant to the HMAS *Sydney*.¹

Reviewing the operations of the Archives Act is not the strategy the Government would adopt to achieve the outcome sought by the Joint Standing Committee. Such a review would presumably encompass all the operations of the Act and might take a considerable time to complete and implement. The Australian Law Reform Commission completed a comprehensive review of the Archives Act in 1998, *Australia's Federal Record* (ALRC Report No. 85) – a second review in swift succession would not seem justified.

Recommendation 2. The Committee recommends that a search be undertaken by the Australian Government at the Public Record Office in London for any records of a court or board of inquiry report into the loss of HMAS *Sydney*. (para 6.120)

The Navy has agreed to commit \$20,000 and, although it is unlikely that a search would exceed this amount, will consider further resourcing the archival search if that is necessary for completeness.

¹ 'In a small number of cases portions of some of the records unrelated to the *Sydney* are not publicly available because they contain sensitive medical or disciplinary information about Service personnel which just happens to occur in the same file or folder as records which relate to the *Sydney*.' Richard Summerrell, *The Sinking of HMAS Sydney: A guide to Commonwealth Government Records* (National Archives of Australia, November 1999), p 9.

Recommendation 3. The Committee recommends the two carley floats in the collection of the Western Australian Maritime Museum be subject to scientific examination by the Western Australian Maritime Museum in conjunction with the Australian War Memorial. (para 7.49)

The Australian War Memorial understands that the two carley floats in the collection of the Western Australian Maritime Museum are not of the type associated with the carley float in the Memorial's collection. The Australian War Memorial is willing, in principle, to cooperate on a comparative materials' analysis of the floats in the two collections.

Recommendation 4. The Committee recommends that the Australian Government continue inquiries to determine if, within the records of the Public Record Office London, there are any records relating to a coronial inquiry undertaken on Christmas Island on the unknown sailor. (para 7.55)

The Government suggests that the Joint Standing Committee's recommendation is based on the possibility that records of a coronial inquiry may have found their way to the Public Record Office among the records of the British Phosphate Commissioners.

The British Phosphate Commissioners was a tripartite partnership involving Australia, New Zealand and the United Kingdom. The Central Office of the Commissioners was based in Melbourne and the National Archives of Australia (in Melbourne) holds a substantial body of the British Phosphate Commissioners' records.

Records of each of the British and New Zealand Commissioners and about the respective Governments' interests in the British Phosphate Commissioners are held by the national archives of each country (ie the Public Record Office and the National Archives of New Zealand). The Public Record Office's holdings of records of the British Phosphate Commissioners date between 1873 and 1983 and consist of 853 files, maps, photographs etc.

Given the extent of the holdings of the National Archives of Australia the most productive course of action might be to first search the records held in Australia for records about a coronial inquiry. The National Archives has agreed to conduct a preliminary search of the files dating to February and March 1942² to ascertain if any records relate to a coronial inquiry:

- Board meeting minutes and decisions of the British Phosphate Commissioners;

² A carley float, containing a corpse, was recovered off Christmas Island on or about 6 February 1942. An inquest was reported to have been in progress in mid-February. Japanese Forces overran Christmas Island on 31 March 1942. If the report of the inquest had not been transmitted to the Commissioners by then it is unlikely to have survived (Joint Standing Committee on Foreign Affairs, Defence and Trade, Report on the Loss of HMAS *Sydney* (March 1999), p 101).

- Memoranda for Board of Commissioners, single number series;
- Subject files relating to island administration and employees;
- Subject files correspondence files, alphabetical series;
- Confidential correspondence.

Recommendation 5. The Committee recommends that the Minister for Regional Services, Territories and Local Government arrange for an assessment of the condition of the cemeteries on Christmas Island, and provide sufficient additional funding to the Christmas Island Shire Council to allow restoration and maintenance work to be undertaken. (para 7.75)

The Christmas Island Shire has advised a cost of \$8000 for rehabilitation work in the old European Cemetery (where the Unknown Sailor is believed to be buried) and \$8500 for rehabilitation work in the old Chinese Cemetery. This work is in accordance with recommendations arising from the HMAS *Sydney* Report.

The Department of Transport and Regional Services has indicated that funding is available for the work to proceed.

Recommendation 6. The committee recommends that:

(a) the Department of Transport and Regional Services and the Department of Defence attempt to locate the grave of the unknown sailor on Christmas Island, by sending a small team (including an archaeologist) to the Island; and

(b) should the gravesite be accurately located, the Minister for Regional Services, Territories and Local Government issue an order for the exhumation of the remains for the purpose of identification. (para 7.90)

Navy Headquarters will participate in action in conjunction with the Office of Australian War Graves and the Department of Transport and Regional Services in an attempt to locate the grave of the unknown sailor. It has not yet been determined whether an archaeologist will be necessary. Subject to legal and other appropriate approvals and clearances, the Deputy Chief of Navy will commence an investigation into the issues relating to the location and recovery of the unknown sailor on Christmas Island, using appropriately skilled personnel. In particular, it is possible that a special Ordinance may have to be made to permit an exhumation order to be issued, should a gravesite be accurately located.

Recommendation 7. The Committee recommends that:

(a) the Christmas Island Shire Council be fully informed and consulted about any proposed exhumation;

The Government concurs with Recommendation 7 (a).

(b) attempts be made to contact the relatives of those also buried in the Christmas Island Old European Cemetery before any exhumation order is made. (para 7.92)

The Government does not support this recommendation, due to funding restraints.

Recommendation 8: The Committee recommends that the Department of Defence provide the families of those lost on HMAS *Sydney* with a copy of their relative's medical records, such as exist, if requested to do so by the families, at no cost to the families. (para 7.111)

Under the provisions of the Archives Act the medical records of those lost on HMAS *Sydney* are in the open period and may be sought by any member of the public.

If access were sought through the National Archives by relatives of those serving on HMAS *Sydney* the National Archives would grant access in full³. The force of this recommendation is therefore that copies be provided to relatives at no cost.

The National Archives and the Department of Defence will incur the costs of processing the requests for free-of-charge access, including photocopying costs, for those parts of the medical records which are in their respective custody at the time of the request.

Recommendation 9. The Committee recommends that:

(a) should the remains on Christmas Island be positively identified, the Australian Government ensure that the next of kin be involved in the decision-making process regarding the reinterment of the remains and any commemorative activities;

(b) if the remains are returned to mainland Australia for burial, a memorial cairn be erected on Christmas Island marking the original burial site;

³ Were access sought by someone unrelated to the person serving on the HMAS *Sydney* some exemptions (for example, to certain information about medical conditions or disciplinary actions) might be applied under the provisions of the Archives Act.

(c) if the remains are not positively identified, they be reinterred in an appropriately marked gravesite on Christmas Island. (para 7.130)

It is normal practice for the remains of Commonwealth Service personnel, whether positively identified or otherwise, to be interred in the nearest Commonwealth War Graves Commission war cemetery to the place of death. This policy has been evidenced in recent years by the remains of aircrew recovered from the wreckage of their aircraft in the jungle of Papua New Guinea being buried in the closest Commonwealth War Graves Commission war cemetery to where their remains were found. The Department of Defence arranged in each case for a military funeral service to be conducted at the gravesite, in the presence of relatives.

In the case of the remains washed ashore on Christmas Island, should they be proven to come from HMAS *Sydney*, there is no way of knowing the place of death, save for at sea. In these circumstances, it is reasonable that the remains be interred in a mainland war cemetery closest to the area of death. The closest war cemetery on the mainland to Christmas Island is the Geraldton War Cemetery. However, it could be argued that it is appropriate that any remains be interred in the Perth War Cemetery.

It is possible the family may wish the remains to stay where they have lain on Christmas Island for the past 57 years. If this were the case, Office of Australian War Graves would, on behalf of the Commonwealth War Graves Commission, mark the grave, record its location and maintain it in perpetuity.

Should any remains be located and removed from Christmas Island, it is not the responsibility of the Office of Australian War Graves to erect a memorial cairn marking the original burial site.

If the remains are identified as an Australian serviceman, but their identity is not established, they should be removed to the closest Commonwealth War Graves Commission war cemetery for burial.

If the remains are not identified as an Australian serviceman, they should be reinterred on Christmas Island. In this scenario, the marking of the grave is not a matter for the Office of Australian War Graves.

Recommendation 10. The Committee recommends that the Royal Australian Navy sponsor a seminar on the likely search areas for *Sydney* and *Kormoran*, involving as many of the individual researchers and groups as possible. (para 8.59)

Navy agrees with the proposal to sponsor a seminar in Western Australia which should focus only on issues related directly to the location and discovery of the wreck. Proposals for presentations should be assessed by a committee including representatives from Navy, the Western Australian Maritime Museum and the HMAS *Sydney* Foundation Trust.

Recommendation 11. The Committee recommends that after the search area is more accurately defined, some preliminary surveys, be undertaken to try and confirm the accuracy of the wreck locations, prior to a full in-water search. An initial search for HSK *Kormoran* at or near 26°32-34'S, 111°E, if supported by the seminar, would seem a logical starting point. (para 8.61)

After the seminar the final recommendations will be provided to the Chief of Navy and Maritime Commander for evaluation as to their appropriateness as a basis for a search. Any final decision on Navy involvement will need to take into account the potential size of the search area, Navy capabilities, national tasking requirements and resource implications.

Recommendation 12. The Committee recommends that the HMAS *Sydney* Foundation Trust and the Australian Government negotiate a Memorandum of Understanding governing the search for, and subsequent protection of, the wrecks of HMAS *Sydney* and HSK *Kormoran*. (para 8.94)

The Government questions the need for a separate Memorandum of Understanding (MOU) with the HMAS *Sydney* Foundation Trust. The Trust signed a Memorandum of Understanding with the Western Australian Maritime Museum in 1997. Prior to signature the then Department of Communications and the Arts and the Department of Defence were given the opportunity to comment on the MOU. At the request of the Department of Communications and the Arts certain points were inserted into the MOU to ensure that it was recognised that the Western Australian Maritime Museum was acting both on its own part and also as an agent of the Commonwealth under the Historic Shipwrecks Act.

Recommendation 13. The Committee recommends that:

(a) the Australian Government provide an initial grant to the HMAS *Sydney* Foundation Trust of \$100,000 to cover activities associated with defining the search area, with a report on its expenditure to be provided to the Australian Government; and

(b) the Australian Government match public donations, on a dollar for dollar basis, up to a total of \$2 million. (para 8.96)

The Government does not support the proposal but is prepared to provide assistance as indicated in its responses to the other recommendations in the report.

Recommendation 14. The Committee recommends that:

(a) should the wrecks of HMAS *Sydney* and HSK *Kormoran* be located in Australian waters, they be declared wrecks of historical significance, under the terms of the *Historic Shipwrecks Act*; and

(b) the Minister for the Environment and Heritage make a declaration creating a protected zone around the site of the wrecks. (para 8.104)

Given the extent of public interest in the fate of HMAS *Sydney* and HSK *Kormoran*, and the historical significance of their engagement, consideration would be given to declaring the vessels to be historic shipwrecks under s.5 of the Act if they are found to lie within Commonwealth jurisdiction inside Australian territorial waters as defined in s.2(5) of the Act, or within the territorial sea of an Australian External Territory. Additional protection could be provided by the declaration of a protective zone around the vessels under s.7 of the Act.

Should the vessels be found to lie outside the territorial jurisdiction of the Commonwealth, there is currently no international instrument compelling their protection in international waters. A UNESCO Draft Convention on the Protection of Underwater Cultural Heritage is presently in the process of negotiation. It may be some time before this is completed and ratified.

Recommendation 15. The Committee recommends that in addition to consultations with the HMAS *Sydney* Foundation Trust on a management plan for the wreck sites, the Western Australian Maritime Museum also consult with the Royal Australian Navy, community groups and other stakeholders. (para 8.110)

The Government will endeavour to ensure that all stakeholders are given the opportunity to participate in the development of a management plan for the vessels, should they be located.

Recommendation 16. The Committee recommends that the Commonwealth and Western Australian Governments jointly fund the construction of a memorial to HMAS *Sydney*, to be erected in Fremantle, with the memorial to be dedicated on 19 November 2001. (para 9.15)

The Government is not opposed to the construction of such a memorial but does not support the recommendation that it be funded wholly by the Commonwealth and West Australian Governments. Such memorials are not usually funded by government except for those few memorials in Anzac Parade, Canberra, erected on behalf of the three Services or those small memorials erected in the memorial gardens of the Australian War Memorial.

Major commemorative war memorials, including those designated as national memorials, are funded by public subscription and managed by a committee representing the special interest groups concerned with the particular memorial. Federal and State governments may donate generously to these fund-raising campaigns but do not fund such memorials in their entirety. Such management committees as are elected, or appointed, take responsibility for every aspect of the memorial from design through to dedication. Even in the case of national memorials, the role of government is limited to policy oversight, management of construction contracts and maintenance of the memorial in perpetuity.

The Commonwealth War Graves Commission already officially commemorates those who perished on HMAS *Sydney* on the Naval Memorials to the Missing in Plymouth, United Kingdom. They are also individually commemorated on the Roll of Honour at the Australian War Memorial.

The Western Australian Maritime Museum is planning a Naval display for the new maritime museum, including reference to the social impact of the loss of HMAS *Sydney* and the ongoing interest in locating the two vessels involved in the conflict. In addition, the Maritime Museum Library has been collecting records about the HMAS *Sydney* and will continue to do this.

The Maritime Museum has signed a Memorandum of Understanding with the HMAS *Sydney* Foundation Trust. In the MOU, the Museum states that it intends to 'jointly consider ways that the Trustees may establish an active centre of remembrance that may be based within the State'. 'Centre of remembrance' is defined as a 'place dedicated to promoting remembrance of the battle and those lost in the battle, that may provide displays of historical artefacts and information, films, multimedia and or other activities such as research, sponsorship of research, debates or forums'.

The HMAS *Sydney* Foundation Trust has also committed to create programs of long term commemoration of HMAS *Sydney* and the sailors who lost their lives in the battle. A virtual memorial, consisting of information technology rather than granite, is among the programs considered by the Trust. Although the Maritime Museum has no plans for a physical memorial to the *Sydney*, it sees strong potential benefits in a Web Site.

Recommendation 17. The Committee recommends that the Royal Australian Navy create a research grant scheme in the name of HMAS *Sydney II* and her crew, to the value of \$50,000 per annum, to support research into aspects of Australian naval history. (para 9.18)

Navy will investigate the possibility of establishing a research grant scheme.

Recommendation 18. The Committee recommends that the Department of Defence co-ordinate a service of commemoration for HMAS *Sydney II* in the year 2001, at the site of the wreck if determined, but also at the new memorial in Fremantle, and in Sydney. (para 9.27)

If action is taken on Recommendation 16, then Navy will meet the cost of the proposed commemorative services in 2001.